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A COMPLETE COLLECTION OF  
THE LORDS' PROTESTS, FROM  
THE FIRST VPON RECORD,  
IN THE REIGN OF HENRY  
THE THIRD, TO THE PRE-  
SENT TIME; WITH A  
COPIOVS INDEX.

To which is added,

AN HISTORICAL ESSAY ON the Legislative Power  
of ENGLAND. Wherein the Origin of both Houses of  
Parliament, their antient Constitution, and the Changes  
that have happened in the Persons that composed  
them, with the Occasion thereof, are related  
in chronological Order. And many Things  
concerning the ENGLISH Government,  
the Antiquity of the Laws of ENG-  
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occasionally illustrated and  
explained.

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IN TWO VOLVMES.

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VOLVME THE FIRST.

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L O N D O N:

Printed in the Year MDCCLXVII.



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*W. Ansgar*

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## ADVERTISEMENT.

OF all kinds of Parliamentary Papers, the  
 Protests of the House of Lords have ever  
 been esteemed the most valuable and interesting.  
 They are particularly so to those young gentlemen  
 who are studying the history and constitution of  
 their country; and, in a word, to every one who  
 is desirous of being acquainted with the Proceed-  
 ings of Parliament, which form the great school of  
 political knowledge. The subjects of the Protests  
 here offered to the public are of the highest impor-  
 tance to the interests and freedom of the nation.  
 They present to us a view of the many noble  
 struggles, which, from time to time, have been  
 made in defence of constitutional *Liberty*; and serve  
 to keep alive, and inspire into the minds of the ris-  
 ing generation, some of the most exalted sentiments  
 that ever entered into the heart of man. The  
 style, in general, is nervous and animated, and  
 the arguments are the strongest that could possibly  
 be produced; all which, indeed, is no more than  
 what might naturally be expected, from the distin-  
 guished abilities of those, who thus committed their  
 sentiments to writing; that they might be delivered  
 to posterity, without the possibility of misrepresenta-  
 tion, in the language as they arose spontane-  
 ously from the mind; when it was warm and full  
 of vigour, and when the expressions flowed strong,  
 and pure from the heart.—Nothing, it is hoped,  
 need further be said to recommend to the pub-  
 lic the present publication; a publication, it is  
 presumed, which, to every competent judge, will  
 appear to be a work that sufficiently speaks for it-  
 self. It may be requisite, however, for the satis-



# iv A D V E R T I S E M E N T.

faction of the reader, to shew in what respects this Collection of Protests excels all those which have ever gone before it. The first Collection of Protests was published in 1735, the second in 1743, and the third in 1747; all of them beginning with the year 1641, and ending with the dates of their respective publications. The Collection which we have here made ascends much higher, even so high as the year 1242, being the 26th year of king Henry III. the first period in which any mention is made of Protests being entered, and it is continued to the present time; which last part of our work will be, in all probability, esteemed the most interesting, as the questions which gave occasion to them are universally allowed to have been of the greatest importance. It is likewise accompanied with an accurate and copious Index, which the other Collections want, and which yet must be confessed to be indispensably necessary. And to the whole is subjoined the scarce and valuable tract of St. Amand on the Legislative Power of England; a piece, which, we imagine, will be deemed no improper Appendix, as it exhibits a distinct view of the ancient Constitution of the parliaments of England, and has been styled by the most able and competent judges one of the best Treatises that ever was written on that subject.

THE



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# PROTESTS.

**K**ING Henry III. solicited the parliament for a sum of money to carry on the war in France; which the barons refused to give him. But lest the words of their refusal should be forgot or mis- construed, they thought proper to commit them to writing: which being in the form of a Petition, and the first we meet with upon record, is placed foremost in this Collection. It is in these words: Since, by the king's command, the lord arch- bishop of York, the rest of the bishops, abbots, and priors in England, by themselves or proxies, also all the castles, and most of the barons of Eng- land, have met at Westminster, on the Wednesday before the Translation of the Blessed Mary, in the year of our Lord One thousand two hundred and forty-two, and in the twenty-sixth of the reign of Henry III.



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A Complete and Correct

COLLECTION

OF

PROTESTS.

FROM THE

REIGN OF HENRY III.

To the PRESENT TIME.

Anno 1242.

**K**ING Henry III. solicited the parliament for a sum of money to carry on the war in France; which the Barons refused to give him. But lest the words of their refusal should be forgot or misconstrued, they thought proper to commit them to writing: which being in the form of a *Protest*, and the first we meet with upon record, is placed foremost in this Collection. It is in these words:

Since, by the king's command, the lord archbishop of York, the rest of the bishops, abbots, and priors in England, by themselves or proxies, also all the earls, and most of the barons of England, have met at Westminster, on the Wednesday before the Purification of the Blessed Mary, in the year of our Lord One thousand two hundred and forty-two, and in the twenty-sixth of the reign of Henry III.

Henry III. to hear the will and pleasure of the king, for which he summoned them: and the said Lord the king sending unto them the said archbishop, with the noble Lord Earl Richard, and Master Walter of York, provost of Beverly, as his solemn messengers, to notify to them the king's mind and business, and to ask the advice and assistance of the Lords in sustaining his hereditary dominions beyond the sea, that regard his kingdom of England: therefore the said bishops, abbots, priors, earls, and barons, taking the king's message into their serious consideration, returned the king, by the same Lords, this advice, viz. That the king should wait until the truce betwixt him and the French king was expired; and if the said king of France should chance to enterprize any thing against the form and tenor of the said truce, that then the king of England should send unto him solemn messengers to ask advice, and to put the said French king upon holding the said truce, and forbearing those enterprizes, if they were made by him, or by his subjects. That if the said French king refused to do this, that then they freely, to this advice, would lend all their aid and assistance, which they all unanimously consented to do. Likewise, that since he had been their sovereign lord, they had many times granted him supplies; first, the thirtieth part of all moveables, after that the fiftieth, and then the fixtieth, a fortieth part on all carucars and hides of land, many scutages, and one very great scutage for the marriage of his sister to the emperor; after all this, truly four years were scarce elapsed, but he again sought another aid, and at last, after much intreaty, a thirtieth was also granted him, with this condition, however, which he ratified by charter, that neither this, nor any former exactions, should stand as precedents for others. Besides this, the  
king



king then granted to them, that all liberties contained in Magna Charta should, in a more ample manner, be held through his kingdom; and to that end, gave them a smaller charter, in which it is so included. Add to this, that our said Lord the king, of his own free will, and by the advice of his whole assembly of Barons, granted to them, that all the money rising from this thirtieth part, should be laid up safely in the king's castles, under the guardianship of our English noblemen, the earl Warren and others, by whose direction and advice the said money should be disbursed for the service of the king and kingdom, whenever it was necessary, and because the barons never knew, nor heard that the said money was expended by the advice and consent of the aforesaid lords, they do verily believe, that the king is still possessed of that money, and therefore cannot now have occasion for more. They are likewise well acquainted, that since that time he has had so many escheats, as that of the archbishoprick of Canterbury, and other rich bishopricks of England, as well as of the lands of the deceased earls, barons, and knights, who held of him; that, even by these very escheats, he ought to have a large sum of money by him, if it was properly taken care of. Besides, from the time of giving that thirtieth part, his itinerant justices have not ceased to make their circuits through all parts of England, as well as with pleas of forest, and with all other pleas, so that every county, hundred, city, town, and almost every village in England, has been grievously amerced; and by these circuits alone, great sums of money have been collected for the king's use; from all which they can well aver, that the kingdom is so burdened and impoverished, that they have little or nothing left for themselves; and because that the lord our king, after the grant of the last thirtieth

tieth part, never kept to his charter, therefore it more than usually troubled them, and since by another charter, he granted, that these exactions should not be made precedents, therefore they positively made answer to their said lord the king, that they would not, for the present, grant him any aid. Nevertheless, as they acknowledged him to be their sovereign lord, they should be willing to give him the best advice in their power, if he would carry himself well towards them to the end of the said truces.

*Anno 1388.*

Divers Lords and others being accused of treason, and other misdemeanors, the prelates absented themselves during the trial, having first made this protestation, saving their right to be present in parliament. Regni more solito considerare, tractare, ordinare, statuere, definire, & cætera exercere, cum cæteris paribus, &c. Verum quia in præsentī parlamento de nonnullis materiis agitur, in quibus non licet nobis juxta Canonum Sacrorum instituta quomodo libet interesse. Eo propter pronobis & nostrum quolibet protestatur quod non intendimus nec volumus, sicuti de jure non possumus nec debemus, nec intenditur nec vult aliquis nostrum in parlamento dum de hujusmodi rebus agitur vel agitur, quomodo libet interesse, sed nos & nostrum quemlibet in ea parte penitus absentare: jure paritatis nostræ, & cujuslibet nostrum interessend. in dicto parlamento, quoad omnia & singula ibidem exercenda juris, & eorum quilibet statu & ordine in omnibus semper salvo, ad hæc insuper protestamur & nostrum quilibet protestatur, quod propter hujusmodi absentiam non intendimus nec volumus, nec nostrum aliquis intendit, nec vult quod processus habiti, & habendi in præsentī parlamento super materiis antedictis, in quibus nec possumus nec debemus

ut



ut præmittitur interesse, quantum ad nos, & nostrum quem libet attinet, futuris temporibus quomodo libet impugnentur, infirmentur seu etiam revertuntur. *Parliament Roll, Numb. 9 & 10.*

[Upon the Lords Journals there are many dissents, which are called *Protests*, *Protestations*, and the like; but are not accompanied with any of those circumstances which distinguish or denote a Parliamentary Protest, in either the spirit or manner of its present acceptation. For instance, anno 1404, the earl of Northumberland came into parliament before the King and Lords, and presented a petition to the king, praying to be restored to his favour. The king referred the petition to the judges for their consideration: but the Lords dissented, and insisted, that the consideration of it belonged to them. Of the same nature are many dissents of the House of Commons from the Lords and King, and are notwithstanding called *Protestations*. As the members of that House have not, by their privileges, a power of *Protesting*, it is plain, that these are properly no more than *dissents*; or where the reasons are reduced to writing, and entered, (as they are in many places) they are Remonstrances; and, with submission, ought to have been so stiled.]

Anno 1549. Jan. 15.

[There are frequent instances of the Lords entering their names, as dissenting from measures carried by the majority of their House; and this entry of their names only, without any reasons assigned, is called a Protest. The first of the kind that we meet with was on this day.]

A bill was read for the third time, and passed, "for an uniformity of service and administration of sacraments to be had throughout the realm."

The

The following Lords are put down as against it.

The earl of Derby, Bishops of Worcester,  
Bishops of London, Westminster,  
Durham, Chichester.  
Norwich, The Lords Dacres,  
Carlisle, Windsor.  
Hereford.

*Anno 1550.*

A bill passed the Upper House, for a form in ordaining ministers, and was protested against by the bishops of Durham, Carlisle, Worcester, Chichester, and Westminster. Another act also passed in the same session, for defacing of images, and was protested against by the earl of Derby, the bishops of Durham, Litchfield and Coventry, Carlisle, Worcester, Westminster and Chichester; the Lords Stourton, Morley, Windsor and Wharton.

This is called, *Protesting without Reasons*, and is practised to this day. *Vide Journals passim.*

*Anno 1621.*

There is a singular memorandum on the Journals, which is called a Protestation, concerning the Commons having passed sentence on Edward Lloyde: it is in these words, "That the proceedings lately passed in the House of Commons, against Edward Lloyde, be not at any time hereafter drawn or used as a precedent, to the enlarging or diminishing of the lawful rights or privileges of either House; but that the rights and privileges of both Houses shall remain in the self-same state and plight as before." The same is entered in the Commons Journals, vol. 1. p. 619, without any alteration or addition; and is there also stiled a *Protestation*.

*Anno*



*Anno 1624.*

There is another singular kind of Protestation. Before the subsidy bill of that year was read a third time, the Lords thought fit to enter the following in their journal book.

“ Forasmuch as this present act of subsidy from the Temporality, is, in many things, different from the ancient usual form of a subsidy bill, and because something contained in the said act may, in time to come, be construed either to lessen the jurisdiction of the one House, or add to the jurisdiction of the other, more than hath been used, or heretofore admitted; therefore the Lords, spiritual and temporal, in the higher House of Parliament, now assembled, do hereby declare and pronounce, and cause this protestation to be entered on record, in the rolls of this parliament.

That no words, matter or thing, in this act contained, shall hereafter be taken or construed to give or take any jurisdiction, power, privilege or authority, to or from either of the said Houses of Parliament; but that either of them shall, severally and dividedly, hold, use, and enjoy such and the same liberties, privileges, powers and jurisdictions, as, heretofore, they, or either of them, respectively had, any thing in this act to the contrary notwithstanding.

*Die Jovis, 9<sup>o</sup> Septembris, 1641.*

After the debate about the printing and publishing of the order of the 16th of January last, viz. (That the divine service be performed as it is appointed by the acts of parliament of this realm, and that all such as shall disturb that wholesome order, shall be severely punished according to law: and that all parsons, vicars and curates, in their several parishes, shall forbear to introduce any  
rites

rites or ceremonies, otherwise than those which are established by the laws of this land.) It being put to the question, whether the lords would order that it should be voted, that the said order of the 16th of January should be printed and published before a conference desired with the House of Commons about it; we whose names are underwritten did dissent, and having, before the putting of the question, demanded our right of protestation, did accordingly make our protestation: That we held it fit and necessary to have the consent of the House of Commons, in those things which concern so nearly the quiet and government of the church: and therefore we desired to have a conference with the House of Commons, before any conclusive order were printed or published herein, especially the House of Commons having but lately brought to us, and desired the consent of our House unto certain votes of theirs, against innovations in or about the worship of God lately practised in this kingdom, without warrant of law; and therefore to acquit ourselves of the dangers and inconveniencies that might arise by the printing and publishing of the said order of the 16th of January, as binding to the whole kingdom, without desiring the consent of the House of Commons; we do protest our dissents to this vote, and do thus enter it as aforesaid.

Co. Bedford, Co. Clare, D. Wharton,  
Co. Warwick, Co. Newport, D. Kymbolton.

*Die Veneris, 24<sup>o</sup> Decembris, 1641.*

It was moved, that the House might be adjourned, and the debate, upon report of a conference held with the Commons, touching the safety of the king and kingdom, to be taken into consideration



consideration on Monday next; but it was desired, that this business might be debated now.

There being several opinions, the question was put, whether the debate upon this report shall be put off till Monday next, or not?

And it was resolved by the major part to be put off till Monday next.

These lords following did dissent to this vote, and before the putting of the question, did claim their right to enter their protestation against it, viz.

In respect the conference brought up and reported from the House of Commons doth, as is thereby declared, concern the instant good and safety of the king and kingdoms, I do protest against the deferring the debate thereof until Monday, to the end to discharge myself of any ill consequence that may happen thereby.

Lord Admiral,

Similiter { Lord Chamberlain,  
Co. Pembroke,  
Co. Bedford,  
Co. Warwick,  
Co. Bolingbroke,  
Co. Clare,  
Co. Stamford,  
D. Wharton,  
D. St. John's,  
D. Spencer,

Similiter

{ D. North,  
Co. Newport,  
L. Vis. Say & Seale,  
Co. Suffolke,  
Co. Carlisle,  
Co. Holland,  
D. Kymbolton,  
D. Brooke,  
D. Grey de Warke,  
D. Roberts,  
D. Howard de Esrick.

*Die Lunæ 24° Januarii, 1641.*

The House commanded the message, which is to be sent to the King by way of thanks for his gracious message sent to both Houses, to be read; and after that, the addition brought up from the House of Commons, which the Committee at Grocer's-Hall have voted to be annexed to the thanks.

Whereas the Houses of Parliament have received from your Majesty a message, expressing much grace and favour to all your Majesty's subjects, they have thought fit to return to your Majesty most humble thanks for the same, and to let your Majesty know they will take it into such speedy and serious consideration, as a proposition of that great importance doth require.

The addition offered by the House of Commons to be annexed.

And to the further intent that they may be enabled with security to discharge their duties herein, they humbly beseech your sacred Majesty to raise up to them a sure ground of safety and confidence, by putting the Tower and other principal forts of this kingdom, and the whole militia thereof, into the hands of such persons as your Parliament may confide in, and as shall be recommended unto your Majesty by both Houses of Parliament; that all fears and jealousies being laid aside, they may with all chearfulness proceed to such resolutions as they hope will lay a sure foundation of honour, greatness and glory to your Majesty and your royal posterity, and of happiness and prosperity unto your subjects throughout all your dominions.

And after long debate it was put to the question, and it was resolved by the major part, that this House doth not confirm nor approve

E

of



of the vote of the Committee concerning the addition brought from the House of Commons to the thanks to be given to the King.

These Lords following, before the putting of the question, desired their right of protestation, if they were out-voted; which the House granted, and accordingly entered their protestation.

Whereas the desire brought from the House of Commons, concerning the forts and militia of the kingdom, concerneth much the safety of the kingdom, the service of the King, the general peace and quiet of this land, and is (as I conceive) absolutely necessary to the settling of the present distempers, and tendeth to the furtherance of trade, now much obstructed and decayed, as hath been represented by several petitions from the city of London, and sundry other countries; I protest against the vote of rejecting of that desire of the Commons, and do testify my dissent, to discharge myself from all the mischiefs and ill consequences that may thereupon follow.

Similiter	{	Lord Chamberlain,	{	Co. Sarum,
		Co. Warwick,		Co. Peterborough,
		Co. Pembroke,		Co. Bolingbroke,
		Co. Holland,		Co. Thanet,
		Co. Stamford,		Co. Nottingham,
		L. Visc. Say and Seale,		L. Visc. Cornway,
		Co. Bedford,		D. Paget,
		Co. Leicester,		D. Kymbolton,
		Co. Clare,		D. Brooke,
		Co. Lincoln,		D. Roberts,
		D. North,		D. Bruce,
		D. Wharton,		D. Dacres,
		D. St. John's,		D. Howard de Esrick,
		D. Spencer,		D. Grey de Warke,
Similiter	{	D. Newnham, (ham,		D. Shandos,
		D. Willough. de Par.		D. Hunsdon.

*Die Mercurii 26<sup>o</sup> Januarii, 1641.*

The House conceiving that certain words, spoken by the duke of Richmond, did reflect to the prejudice of the king and kingdom;

After long debate it was put to the question, whether it shall be sufficient satisfaction to this House, that the lord duke of Richmond shall come into his place and make an humble submission and acknowledgment that he hath offended the House in speaking these words inconsiderately and unadvisedly, and that he had no intent or meaning to have the House adjourned for six months, and that he craves their Lordship's pardon for it?

And it was resolved affirmatively.

These Lords following dissented from the afore-said vote, and before the putting of the question demanded their right of protestation, which the House granted, and they have accordingly entered their protestations as follows.

That in respect the words spoken by the duke of Richmond, which were these (*Let us put the question, whether we shall adjourn for six months*) tended much to the prejudice of the King and kingdom, I do protest against the vote, as not a sufficient punishment for words of that dangerous consequence.

Similiter { The Lord Admiral,  
Lord Chamberlain,  
Co. Pembroke,  
Co. Suffolke,  
Co. Lincoln,  
Co. Leicester,  
D. Paget,  
D. Hunsdon,  
D. Shandos,  
D. St. John's,  
D. Spencer,

Similiter { Co. Warwick,  
Co. Holland,  
Co. Bolingbroke,  
Co. Stamford,  
Lord Visc. Cornway,  
D. Wharton,  
D. Kymbolton,  
D. Brooke,  
D. Grey de Warke,  
D. Roberts,  
D. Howard de Esrick.



*Die Martis 15<sup>o</sup> Martii, 1641.*

The House of Commons having sent up the following vote, *viz.* That in this case of extreme danger, and of his Majesty's refusal, the ordinance agreed on by both Houses for the militia doth oblige the people, and ought to be obeyed by the fundamental laws of this kingdom.

Resolved (upon the question) that this House agrees with the House of Commons in this vote.

These Lords following dissented to this vote, having demanded their right of protestation and dissent before the question was put, which accordingly the House granted, and have done it *in hac verba, viz.*

Whereas before the putting of this question, *viz.* That in this case of extreme danger, and of his Majesty's refusal, the ordinance agreed upon by both Houses for the militia doth oblige the people, and ought to be obeyed by the fundamental laws of this kingdom, (there was a question first put, whether the Judges should be heard in point of law contained in this question) which question of hearing the Judges was carried negatively; we whose names are underwritten do enter this our protestation and dissent from that question, *viz.* That in this case of extreme danger and of his Majesty's refusal, the ordinance agreed upon by both Houses for the militia doth oblige the people, and ought to be obeyed by the fundamental laws of this kingdom.

Similiter	{	Comes Bathon,	similiter	{	D. Dunsmore,
		Co. Southampton,			D. Lovelace,
		Co. Cleveland,			D. Capell.

*Die Jovis 13<sup>o</sup> Decembris, 1660.*

*Hodie 3<sup>a</sup> vice lecta est billa,* An act to vacate certain fines unduely procured to be levied by Sir Edward

Edward Powell, Knt. and Bart. and dame Mary his wife.

The question being put, whether this bill shall pass for a law?

It was resolved in the affirmative.

Whereas before the question was put for passing the said bill, leave was desired for entering protestations in the behalf of the Lords hereunder written, in case the vote upon the said act should be carried in the affirmative, we, in pursuance thereof, do enter our protests against the said act following:

That fines are the foundations of the assurances of the realm, upon which so many titles do depend, and therefore ought not to be shaken; nor hath there any precedent occurred to us, wherein any fines have been vacated by judgment or act of parliament, or otherwise, without consent of the parties; the eye of the law looking upon fines as things always transacted with consent, and with that reverence, that no averment whatsoever shall be good against them when they are perfected; and farther, we conceive, that by a future law to vacate assurances, which are good by the standing law, is unreasonable and of a dangerous consequence, especially in this case, where Skinner and Chute, purchasers of a considerable part of the lands comprised in the said fines, have petitioned, and yet have not been heard upon the merits of their case, which is contrary, as we conceive, to the statute of 28Edw. III. chap. 3. which saith, No man shall be put out of his land or tenement, nor disherited, without being brought to answer by due process of law.

Edw. Hyde, C. T. Willoughby, Chr. Hatton,  
F. Montague, Portland, Ch. Richmond  
W. Say and Seale, Sandys, and Lenos,  
T. Culpeper, Will. Petre, Manchester,



Tho. Coventry,	L. Howard,	Ro. Laxington,
W. Roberts,	W. Grey,	Suffolke,
Brecknock,	Albemarle,	Stafford,
Norwich,	Berkshire,	Fr. Dacre,
Brudenell,	A. Capell,	P. Wharton.

*Die Mercurii 17<sup>o</sup> Julii, 1661.*

*Hodie 3<sup>a</sup> vice lecta est billa,* An act for making void divers fines unduely procured to be levied by Sir Edward Powell, Knt. and Bart. and dame Mary his wife.

The question being put, whether this bill with the proviso shall pass for a law?

It was resolved in the affirmative.

Whereas before the question was put for passing the said bill, leave was desired for entering protestations of divers Lords, in case the vote should be carried for passing the said bill; we whose names are underwritten do protest against the said bill for these reasons following:

1st, That fines are the foundations upon which most titles of this realm do depend, and therefore ought not to be shaken, for the great inconvenience that is likely to follow thereupon.

2dly, Such proceeding is contrary to the statute of 25 Edw. I. now in force, which saith, Forasmuch as fines levied in our court ought and do make an end of all matters; and therefore principally are called fines.

3dly, And to another statute made in the fifth year of King Edward III. where it is enacted, That no man shall be forejudged of lands or tenements, goods or chattels, contrary to the term of the great charter.

4thly, And to another statute made in the 28th of Edw. III. where it is enacted, That no man, of what estate or condition that he be, shall be put out of land or tenement, nor disherited, without being brought in to answer by due process of law.

5thly,

5thly, This proceeding by bill, as we conceive, is contrary to a statute made in the fourth year of King Hen. IV. wherein it is declared, That in pleas real and personal, after judgment given in the courts of our Lord the King, the parties be made to come in upon grievous pains, sometimes before the King himself, sometimes before the King's Council, and sometimes to the Parliament, to answer thereof anew, to the great impoverishing of the parties, and in the subversion of the common law; it is ordained, that after Judgment given in the courts of our Lord the King, the parties and their heirs shall be thereof in peace until the judgment be undone by attainr or by error, if there be errors, as hath been used by the laws in the times of the King's progenitors.

6thly, The proceedings upon this bill have been, as we conceive, directly against the statutes aforesaid, by calling persons to answer of judgments anew, given in the Common Pleas, and vacating the same without either attainr or error, and calling persons to answer without the due and ancient process of law, and forejudging the tenants of the lands in question, without ever hearing of them.

7thly, For that there hath not occurred to us one precedent wherein any fine hath been vacated by act of parliament without consent of parties, the law looking upon fines as always transacted by consent, and with that reverence, that neither lunacy, ideotism, nor any other averment whatsoever shall be admitted against fines when perfected.

8thly, We conceive, to vacate assurances by a future law, good by the present law, is unreasonable and of dangerous consequence, both in respect of what such a precedent may produce upon the like pretences, as also rendering men's minds so doubtful, that not only the rude and ignorant, but the learned, may be at a loss how to make or receive a good title.



9thly, For that it is averred in the said bill, that all the Lady Powell's servants were removed; whereas it appeared by depositions in Chancery, that Antonia Christiana, one who had lived with the Lady Powell many years, was not removed.

10thly, That Dr. Goddard a Physician, and Foucaut an Apothecary, examined in the said cause, did testify they saw no fear in, or force upon, the Lady Powell; and had there been any, we conceive it impossible for a woman to hide the passion of fear from a Physician, which is not easily dissembled from a vulgar eye; and Foucaut the Apothecary deposed, that he was twice a day with the said Lady Powell for one month together immediately preceding her death.

W. Roberts,	Brecknock,	Portland,
Campden,	Will. Petre,	Albemarle,
Stafford,	Montague,	Chr. Hatton,
T. Willoughby,		

*Die Martis 17<sup>o</sup> Decembris, 1661.*

The House entering into consideration of the amendments to the bill concerning corporations.

And the question being put, whether to agree to the said amendments?

It was resolved in the affirmative.

Memorandum, That before the putting the aforesaid question, some Lords desired leave to enter their protestation, if the aforesaid question was carried in the affirmative; and accordingly the earl of Bolingbroke entered his protestation upon these reasons:

1st, That the amendments to the bill touching corporations, he conceives, are against the privileges granted by the great charter in the 9th and 29th chart. by many several acts confirmed.

2dly, That the power herein granted is against judicial trials, which proceed by oath.

Bolingbroke.

*Die*

*Die Jovis 6<sup>o</sup> Februarii, 1661.*

*Hodie 3<sup>a</sup> vice lecta est billa,* An act for the restoring of Charles earl of Derby to the manors of Hope and Hopesdale and Molestdale in the county of Flint.

The question being put, whether this bill shall pass?

It was resolved in the affirmative.

Whereas before the question was put for passing the said bill, leave was desired for entering a protest on the behalf of the Lords hereunder written, in case the vote upon the said bill pass in the affirmative; we in pursuance thereof, according to the course of parliament in such like cases used, do enter our protestation against the said bill for these reasons following:

That it appears to us, these two manors were sold by the earl of Derby, and in pursuance of contracts desired and made by himself; that the purchasers are now in possession thereof, by good assurances in law, as deeds inrolled, feoffments, fines, recoveries passed from the earl and his lady; that, we conceive, by a future law to destroy assurances, which are good by the standing law, is of dangerous consequence, and in this case unreasonable, where the contracts and conveyances have appeared voluntary and desired on the earl's part, in whom there was no disability to grant or convey, and the proceedings on the part of the purchasers to have been without colour either of error or crime: that we think it not reasonable by a new law to create an equity of redemption after a purchase fairly transacted and perfected, nor to require any account from the purchasers, when from the nature of the purchase we cannot reasonably expect it, and particularly, we think it beyond all pretence of justice, that they should be required  
to



to account for the sum of nine thousand pounds, which they received for the redemption of Hawardine, without any allowance made to them for the purchase thereof, which they made by direction of the earl of Derby, and for his use, and were only reimbursed in this sum of nine thousand pounds, according to their articles, when the said earl sold this manor to serjeant Glynne; and the business of Hawardine is altogether foreign, both to the title and substance of the bill, and concerning which there hath not been any thing heard at the bar or otherwise.

Besides, we cannot look upon this but as a breach of the act of judicial proceedings, when by a new law we take away the force of those fines and recoveries which by that act were made good, and no less than a trenching on the act of indemnity and oblivion, when an estate so fairly derived must be looked upon as destroyed, only in favour of the earl of Derby, when no argument from the demerits of the purchase could persuade it; and that this is of such a consequence, as the same favour can never be denied to any one hereafter that shall ask it; which, of necessity, will infer a general violation of that act: this bill tendeth to vacate the great assurances of the realm before-mentioned, which may be of so dangerous consequence, as to render buying and selling of land insecure, uncertain and doubtful: it brings titles into examination in parliament, after judgments given, as those of fines, contrary to the statute of 4 Hen. IV. ch. 22. It doth not restore the consideration given for the purchase; it creates suits and contentions between the parties, who have not, nor can have any about the said lands without this act; whereas the authority of parliament ought to be of last resort, and to mend and end the work of other courts, but not to make  
work

work for them; it seems to pass too soon, the cause appearing in the body of it, not to be ripe for determination; and it is without precedent, for part of a cause to be judged in one court, and the rest of it in another; besides the bill mentioneth some practices of the purchasers, which we conceive not proved.

Clarendon,	C. Brecknock,	S. Bristol,
Manchester,	W. Roberts,	J. Northumberland,
C. Warwick,	Portland,	P. Wharton,
W. Grey,	W. Paget,	Fauconberg,
Carlisle,	Bedford,	F. Arundell,
Essex,	Stafford,	Exeter,
Anglesey,	J. Bridgewater,	Chesterfield,
Windfor,	J. Burgevenny,	Scarsdale.
Suffolk,		

*Die Sabbati 8° Februarii, 1661.*

*Hodie 3<sup>a</sup> vice lecta est billa,* An act for disuniting the hundreds of Dudston and King's-Barton from the county of the city of Gloucester, and restoring them to be part of the city of Gloucester.

The question being put, whether this bill with the amendments now read shall pass?

It was resolved in the affirmative.

Before the putting of the aforesaid question, the earl of Bolingbroke desired leave of the House to enter his dissent, if the question was carried in the affirmative; which being granted, his Lordship dissented as followeth.

I dissent, conceiving it usual to confirm, not ordinary, but dangerous to vacate grants made under the great seal, being the great assurances from the crown.

Bolingbroke.

*Die Lunæ 5° Maii, 1662.*

The earl of Bolingbroke reported from the Committee the bill for distributing three score thousand



(sand pounds amongst the indigent and loyal commiſſionated officers, with certain alterations and amendments, which are offered to the conſideration of the Houſe; the ſaid amendments were read twice, and then a proviſo was offered to the Houſe for reſerving the King's right touching the diſpoſing of the ſaid threeſcore thouſand pounds, which was read.

And after a long debate the queſtion being put, whether this proviſo, that hath been offered, ſhall be added to the bill?

It was reſolved in the negative.

Memorandum, That the earl of Bolingbroke deſired leave of the Houſe to enter his diſſent, if the aforeſaid queſtion was carried in the negative; and entered his diſſent as follows:

Of theſe reaſons, that I conceive the ſole and ſupreme power of diſpoſing of monies is in the King, and that no aid ought to be diſpoſed but by his ſole warrant and commiſſion, and conſequently that no perſon or perſons may any ways join therein without prejudicing his Maſteſty's prerogative; and hereon only I deſire the admitting the proviſo.  
Bolingbroke.

*Die Lunæ 19<sup>o</sup> Maii, 1662.*

The lord Aſhley reported the effect of the free conference with the Houſe of Commons concerning the alterations in the bill for mending the common highways; that the Houſe of Commons do not agree to their Lordſhips amendment in the fourth ſkin, forty-fiſt and forty-ſecond lines, concerning horſes to go a-breſt.

And in the fiſth ſkin, ſixth line, concerning the penalty of forty ſhillings for each horſe forfeited, the Commons do adhere as it ſtands in the bill.

And as to their Lordſhips fiſt and ſecond proviſo's concerning the altering of thoſe bridges mentioned

tioned therein, the House of Commons do not agree to them; and they were commanded to insist upon it, that their Lordships had no right to offer such proviso's, because they concern assessing of the Commons.

As to these precedents, which their Lordships urged at the conference, as that for repairing Dover-Pier, and the bill for rating persons to the poor, and the bill (in 4 & 5 Philip and Mary) for assessment of horse and arms, all which began in the House of Peers: the Commons said they are but single precedents, and do not weigh with them.

The Lords conceiving this business to be a matter of great concernment to the privilege of the House of Peers, fell into debate concerning the leaving out these two proviso's touching the altering of the two bridges at the charge therein mentioned; and the question being proposed, whether this House do agree with the House of Commons in this business, asserting their privileges at a conference?

The question being put, whether this question shall be now put?

It was resolved in the affirmative.

Then the question being put, whether this House do agree with the House of Commons in leaving out the two privileges, asserting their privileges at a conference?

It was resolved in the affirmative.

This House adheres to their amendment for two horses to go a-breast, and do agree with the House of Commons for the penalty to be forty shillings.

Whereas a bill, entitled, An act for enlarging and amending the common highways, came from the House of Commons, unto which the Lords added two several proviso's, laying a charge for the repair of two bridges, which proviso's were rejected by the House of Commons upon this ground,  
given



given to the Lords at several conferences by some members of the House of Commons, *viz.* That the Lords have no power to begin any bill, or add any clause to any bill, that in any kind charged money either for repairing or paving of highways, mending of bridges, or other public use; which we conceived to be against the privilege of this House, and many precedents, as a statute made in 4 & 5 Philip and Mary, for assessing all persons therein mentioned for horse, arms, and foot-arms; and another act in the time of Queen Elizabeth, for repair of Dover-Pier; and one other act in the fifth year of the said Queen, for relief of the poor; and other acts: all which began in the House of Peers, and were assented to by the Commons, and by the royal assent passed into by laws. And whereas the House of Peers did, after the said conference, pass this vote in the affirmative, *viz.* To agree with the House of Commons in leaving out the two proviso's, asserting their privileges at a conference; and whereas, before the putting the said vote, we whose names are hereunto subscribed, desiring liberty of our dissent unto the said vote, we do, for the reasons aforesaid, and to assert so much as involves so important and ancient a privilege of the House of Peers, enter our dissent and protestation against this vote.

Roberts,	Bolingbrook,	T. Culpeper,
Hen. Chichester,	Stafford,	R. Byron,
Essex,	Derby,	Anglesey,
E. Howard,	Lawarr,	C. Warwick,
W. Maynard,	Awdley,	

*Die Veneris 24° Julii, 1663.*

A bill, entitled, An act for the encouragement of trade, being this day read the third time, and ready to be put to the question for passing into a law; it was moved, and granted by the House, that

that if the question passed in the affirmative, such Peers as were against the bill might enter their protestation; and accordingly we whose names are subscribed do protest against the said bill being made a law, for the reasons following:

1st, Because, in the free liberty given for transporting of money and bullion, this bill crosseth the wisdom and care of our ancestors of all ages, who by many laws and penalties, upon excellent and approved grounds, have restrained such exportation, and thereby preserved trade in a flourishing condition.

2dly, There appearing already great want of money in his Majesty's dominions, and almost all the gold of his Majesty's stamp gone, notwithstanding the restraint laid by law, and the importation of foreign commodities (which are grown to so great an esteem and use amongst us) being much greater than the export of our native and simple commodities, it must necessarily follow, by this free exportation, that our silver will also be carried away into foreign parts, and all trade fail for want of money, which is the measure of it.

3dly, It will make all our native commodities lie upon our hands, when rather than stay for gross goods, which pay custom, the merchant, in a quarter of an hour, when his wind and tide serves, freights his ship with silver.

4thly, It trencheth highly upon the King's prerogative, he being by the law the only exchanger of money, and his interest equal to command that as to command the militia of the kingdom, which cannot subsist without it; and it is dangerous to the peace of the kingdom, when it shall be in the power of half a dozen or half a score rich, discontented or factious persons, to make a bank of our coin and bullion beyond the seas for any mischief, and leave us in want of money; and it shall

not



not be in the King's power to prevent it, the liberty being given by a law; nor to keep his mint going, because money will yield more from that at the mint.

5thly, Because a law of so great change, and threatening so much danger, is made perpetual, and not probationer.

6thly, Because, in the restraint laid on importation of Irish cattle, common right and the subjects liberty is invaded; whilst they, being by law native Englishmen, are debarred the English markets, which seems also to monopolize the sale of cattle to some of his Majesty's English subjects, to the destruction of others.

7thly, It will, we conceive, increase the King's charge of Ireland, by calling for revenue from England, if that, which is almost the only trade of Ireland, shall be prohibited, as in effect it is; and so the people, we conceive, disabled to pay the King's dues, or grant subsidies in Ireland.

8thly, It threatens danger to the peace of the kingdom of Ireland, by universal poverty; which may have an unhappy influence upon the rest of his Majesty's dominions.

9thly, The restraint upon importation of Irish and Scotch cattle will, we conceive, be the decay of two of his Majesty's cities of England, Carlisle and Chester, make a dearth in London, and discommode many other parts of England. Other reasons are forborne, which time will produce.

Anglesey.

*Die Sabbati 25<sup>o</sup> Julii, 1663.*

The earl of Bridgewater reported from the Committee for preparing the bill for relief of such persons as by sickness or other impediment were disabled from subscribing the declaration in the act of uniformity, an explanation of part of the said act;

act; wherein the Committee made some alterations and amendments, and have added a clause; which are offered to the consideration of this House: the amendments and alterations were read twice, and agreed to; and then the clause was read as follows:

And be it enacted and declared by the authority aforesaid, That the declaration and subscription of assent and consent, in the said act mentioned, shall be understood only as to the practice and obedience to the said act, and not otherwise.

And the question being put, whether to agree with the Committee in this clause?

It was resolved in the affirmative.

Memorandum, Before the putting of the aforesaid question, divers Lords desired leave to enter their protestation, if the question was resolved in the affirmative; which the House granted, and accordingly this protestation was made by these Lords following:

In regard, we conceive, that this clause in the act, *viz.* (And be it enacted and declared by the authority aforesaid, That the declaration and subscription of assent and consent, in the said act mentioned, shall be understood only as to the practice and obedience of the said act, and not otherwise) is destructive to the church of England as now established, we therefore have entered our protestation against that clause.

James,	Dorset,	Mordaunt,
Cha. Gerrard,	T. Culpeper,	J. Lucas,
J. Bridgewater,	Derby,	Peterborough,
W. Maynard,	Jo. Berkeley,	Northampton,
Berkshire,	Cornwallis,	

*Die Martis, 29<sup>o</sup> Novembris, 1664.*

The question being put, whether these words, *As it shall appear to him to be on either part, notwithstanding*



*withstanding there be not any precedent in the case,*  
shall be added to the order made yesterday in  
the case of Robert Roberts, Esq; and his wife  
and son?

It was resolved in the affirmative.

Against which vote the Lord following doth  
protest and dissent (having liberty of the House so  
to do before the question was put) for that he is  
not satisfied to give directions how the Chancery  
should adjudge a cause, the merits whereof this  
House never heard at the bar, and which, he con-  
ceives, is not legally before this House; for that  
the former transactions and proceedings which this  
House made therein, and all debates, votes and  
resolutions thereupon, are determined with a for-  
mer session of parliament, and so totally shut out  
of doors, as if it had never been entertained by  
this House; and for that the said vote, seems to  
enlarge the bounds of the Chancery, which is  
by this vote directed to make a decree, tho' there  
hath been no precedent in the case, especially where  
the will of the dead may be overthrown, infants  
decreed out of a legal estate, and provision made  
by the testator to pay honest debts defeated and  
avoided.

Mohun.

I being unsatisfied in my judgment concerning  
the vote which passed this day, for an order to be  
directed from this House to the Lord Chancellor  
in the case of Mr. Roberts, did demand leave of  
the House to enter my dissent; and accordingly  
do protest against that vote for these reasons fol-  
lowing:

1<sup>st</sup>, I conceive this may be of dangerous conse-  
quence, if, in this conjuncture of time, it should occa-  
sion any misunderstanding betwixt the two Houses;  
union of both Houses conducing so much to the safe-  
ty of the king and kingdom; for haply they may  
apprehend, as sometimes they have formerly done,  
that

that this House doth extend their power of judicature farther than ever hath formerly been; and therefore should think themselves interested, that if any remedy, in this extraordinary case, should be applied to Mr. Roberts, who is a member of their own House, it ought to be by the legislative power, and not by the judicial.

2dly, Whereas it hath been the prudence and care of all former parliaments to set limits and bounds to the jurisdiction of Chancery, now this order of directions (which implies a command) opens a gap to set up an arbitrary power in the Chancery, which is hereby countenanced by the House of Lords, to act not according to the accustomed rules or former precedents of that court, but according to his own will; *sic volumus, sic jubemus, stat pro ratione voluntas.* T. Lyncolne.

*Die Lunæ, 14<sup>o</sup> Januarii, 1666.*

The House resumed the further consideration of the report of the free conference with the House of Commons touching the word *nusance* in the bill against importing of Irish cattle.

And after debate thereof, the question being put, whether to agree with the House of Commons?

It was resolved in the affirmative.

Memorandum, That the question being ready to be put for agreeing with the House of Commons in the said bill, and thereon divers of the Peers humbly moving that their protestation might be entered, if the said question should be carried in the affirmative (as it was) we whose names do ensue, do accordingly enter our dissents from the said resolution, for many reasons offered in debates of the House, and at conferences with the Commons, and particularly for these reasons following:



1st, Because, as we humbly conceive, the importation of Irish cattle is no nuisance; and therefore we could not consent to call it what it is not.

2dly, Because the word *nuſance* was professedly designed by the House of Commons to restrain and limit a just, necessary and ancient prerogative inherent in the crown, for the good and safety of his Majesty's people, upon accidents and emergencies, which cannot be foreseen upon the making of new laws.

3dly, Because there appears no precedent of any remedy provided against nuisances, but by perpetual laws and removing the nuisances; whereas this bill is made but probationer, so that after a while the nuisance (if any) will revive.

Lastly, This most honourable House at a conference did timely (after several days debate) acquaint the Commons, that they resolved not to admit the word *nuſance*; and before the last conference entered the same day (as follows in the journal of parliament) that they had great reason to insist, and commanded their managers to declare so much to the Commons, when they let them know they did agree; which was done accordingly.

Cardigan,	Burlington,	Conway,
Anglesey,	J. Bridgewater,	Lawarr,
Berkeley,	Audley,	

*Die Mercurii, 23<sup>o</sup> Januarii, 1666.*

*Hodie 3<sup>a</sup> vice lecta est billa,* An act for erecting of a judicature for determination of differences touching houses burned and demolished by reason of the late fire which happened in London.

The question being put, whether this bill, with the alterations and amendments now read, shall pass?

It was resolved in the affirmative.

Memo.

Memorandum, Before the putting of the above-said question, the earl of Dover desired leave to enter his protestation, if the question was carried in the affirmative; which was granted, and accordingly entered his dissent.

By reason of the unlimited and unbounded power given to the Judges in this bill, without any appeal, I enter my dissent to this bill, Dover.

Written in the earl's own hand.

*Die Luna, 4<sup>o</sup> Februarii, 1666.*

Upon report from the Committee of Privileges of some precedents concerning the message from the House of Commons, touching the manner of proceedings upon the impeachment against the lord viscount Mordaunt?

After a serious consideration and debate, the question was put, whether to grant a conference with the House of Commons upon the desire of the late message from the House of Commons, concerning the manner of proceedings upon the impeachments of the lord viscount Mordaunt?

It was resolved in the affirmative.

Memorandum, That these Lords following, before the putting of the aforesaid question, desired leave to enter their dissents, if the question was carried in the affirmative; which was granted, and accordingly entered their dissents as follows:

The reason why we have desired leave of the Lords to enter our dissents to the foregoing votes, is, because we believe, the conferring with the House of Commons, upon a matter only relating to the manner of judicature, as we humbly conceive this to be, is a very great derogation to the privileges of this House; we do therefore enter our dissents accordingly.

Dorchester, J. Bridgewater, Howard of Charlton.



*Die Martis, 5<sup>a</sup> Februarii, 1666.*

A message was brought from the House of Commons by Sir Robert Holt and others, to desire a free conference concerning the impeachment against the lord viscount Mordaunt.

The House taking this message into serious consideration, and after a long debate,

The question being put, whether to grant a free conference to the House of Commons in this matter?

It was resolved in the negative.

The Lord following, before the putting of the abovesaid question, desired leave to enter his dissent, if the question was carried in the negative; which was granted, and accordingly entered his dissent.

The denial of a conference, which is the only way of keeping a good and right understanding and correspondency between the two Houses of Parliament, being ever unfit; I enter my dissent.

Dover. Written by the earl himself.

*Die Jovis, 7<sup>o</sup> Februarii, 1666.*

*Hodie 3<sup>a</sup> vice lecta est billa,* An act for rebuilding the city of London.

The question being put, whether this bill, with the amendment and proviso, shall pass?

It was resolved in the affirmative.

Memorandum, That before the putting of the abovesaid question, the Lord following desired leave to enter his dissent, if the question was carried in the affirmative, and accordingly entered his dissent.

For the exorbitant and unlimited powers given in this bill to the lord mayor and aldermen of the city of London, to give away or dispose of the property of landlords, I do here enter my dissent and protestation against the bill.

Dover.

*Eodem*

*Eodem Die.*

Memorandum, That before the putting of the question, whether the Lords should give a free conference to the House of Commons, upon the subject-matter of the last conference concerning the impeachment of the lord viscount Mordaunt? The earl of Bridgewater desired leave to enter his dissent, if the question was carried in the affirmative; which being granted, he accordingly entered his dissent by subscribing his name, because the conference granted was not a bare conference, but a free conference, J. Bridgewater.

*Die Mercurii, 20<sup>o</sup> Novembris, 1667.*

The House took into consideration the report of the conference with the House of Commons yesterday, concerning the proceedings against the earl of Clarendon; in order thereunto the reasons of the House of Commons were read, and then these precedents, mentioned by the Commons, were read.

1st, The precedent of the impeachment of treason against the earl of Stafford, the 11th of Nov. 1640.

2dly, The impeachment of treason against William Laude, archbishop of Canterbury, the 18th of December, 1640.

3dly, The impeachment of treason against the lord Finch, lord-keeper, the 22d of December, 1640.

4thly, The impeachment of treason against Sir George Radcliffe, the 29th of December, 1640.

And after a long debate of the first reason, and the aforesaid precedents, the second, third, fourth, fifth and sixth reasons were again read.

And, after a serious debate thereof, the question being put, whether upon these precedents



and reasons of the House of Commons, and the whole debate thereupon, their Lordships are satisfied to comply with the desires of the House of Commons for sequestering from this House, and committing the earl of Clarendon, without any particular treason assigned or specified?

It was resolved in the negative.

We whose names are underwritten do, according to the ancient right and usage of all the Peers of the realm assembled in parliament, after due leave demanded from the House in the usual manner and form, as the journal-book doth shew, enter and record our protestation and particular dissents as follow, and for these reasons:

1st, That we are satisfied, in agreement with so much of the reasons of the House of Commons alledged to that purpose, as upon a very long and solemn debate in this House did concur with our sense, that the earl of Clarendon should be committed to custody, without assignment of special matter, until the particular impeachment shall be exhibited against him by the Commons before the Lords in parliament; or else how shall any great officer of the crown, and his accomplice, be prevented from evading to be brought to a fair and speedy trial?

2dly, We do conceive, that the four precedents urged by the House of Commons for his commitment as aforesaid, and to justify the way of their proceedings by general impeachment only, are valid, and full to the point of this case; and that the precedent of William de la Pool, duke of Suffolk, in the 28th of Hen. VI. is no precedent at all to the contrary, in regard that it was no judgment nor appeal in parliament, but rather an appeal to the King from the judicature of the parliament, whilst the parliament was sitting, which is not according

according to the known privileges and customs of this House.

3dly, The earl of Clarendon's power and influence in the absolute management of all the great affairs of the realm hath been so notorious ever since his Majesty's happy return into England, until the great seal was taken from him, that whilst he is at liberty few or none of the witnesses will, probably, dare to declare in evidence all that they know against him; for defect whereof the safety of the King's person, and the peace of the whole kingdom, may be very much endangered.

4thly, We conceive, that in cases of treason and traiterous practices, the House of Commons have an inherent right in them to impeach any peer of the realm, or other subject of England, without assigning of special matter, because treason, either against the King's person, or the government established, which are indivisibles, is such a speciality in itself alone, that it needs no farther specification as to the matter of safe custody; nor can it be suspected, that so honourable a body as the House of Commons would have accused a peer of the realm, of the earl of Clarendon's eminency and condition, without very good cause.

Buckingham,	Pembroke and	Norwich,
Albemarle,	Montgomery,	Vaughan,
Teynham,	Rochester	Hen. Hereford,
W. St. David's,	Jo. Duresme,	Byron,
T. Lucas,	W. Sandys,	Bathe,
Cha. Gerrard,	Jo. Berkeley,	Bristol,
Berkshire,	Northampton,	Arlington,
Poulett,	Kent,	Saye and Seale,
Howard of	Carlisle,	Powis.
Charlton,	Dover,	



*Die Jovis, 21<sup>o</sup> Novembris, 1667.*

A message was sent to the House of Commons by Sir William Childe and Sir John Cole, to desire a present conference in the Painted Chamber, concerning the matter of the last conference touching the earl of Clarendon.

The messengers sent to the House of Commons returned with this answer: That the House of Commons are now in debate of matters of great consequence, and will return an answer presently by messengers of their own.

A message was brought from the House of Commons by Sir Robert Howard and others, to desire a conference upon the last message.

The question being put, whether to give the House of Commons a present conference upon the last message?

It was resolved in the affirmative.

Memorandum, That before the putting of the abovesaid question, these Lords following desired leave to enter their dissent, if it were carried in the affirmative; which being granted, they do accordingly enter their dissents, by subscribing their names to the reasons following:

1st, Because the Lords having first desired a conference the Commons did not give it.

2dly, Because there is no precedent, that they can find, of any such proceeding in parliament before this.

3dly, Because the House of Commons could not tell what was to be offered at the conference desired by the Lords.

4thly, Because, for ought they know, the Lords at the conference intended to agree with their reasons, or give reasons against them.

5thly, Because there are no precedents of free conferences (nor can they, as we conceive, be) in points

A. 1667.

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points relating to judicature, which is entirely the Lords, whose work is to consider the reasons offered by the Commons, and give the rule.

Anglesey, Chandos, J. Bridgewater.

*Die Jovis, 12<sup>a</sup> Decembris, 1667.*

*Hodie 3<sup>a</sup> vice lecta est billa.* An act for banishing and disenabling the earl of Clarendon.

The question being put, whether this bill shall pass?

It was resolved in the affirmative.

I whose name is underwritten do, according to the ancient right and usage of all the peers of the realm assembled in parliament, after due leave demanded from the House in the usual manner and form, as the journal-book doth shew, enter and record my protestation and dissent as follows:

1st, That without having ever been in prison, or imprisonment appointed, or any legal charge brought, it seems unjust to punish the earl of Clarendon for only withdrawing himself; it not being at all certain to the House, that he is gone out of the kingdom; and if it were known to the Lords that he were fled beyond the seas, tho' the fault would be very great in a person who hath lately been in such trust, yet perpetual exile, and being for ever disabled from bearing any office, and the other penalties in the bill, seems too severe a censure.

2dly, That it may, perhaps, give some occasion for the scandal to have it believed, that the House of Commons, and others, by standing so long upon pretence of a privilege to require commitment before special matter of treason assigned, were in doubt, that no proof of treason could be made out against the party accused; and that they had therefore designed, through terror, to make him fly and fear, lest he should yet return to be tried,



tried, in case they should bring in special matter of treason, as they ought to do, whensoever they accuse.

3dly, That by this bill, power being taken from the King to pardon, it appeareth to be a great intrenchment upon his Majesty's royal prerogative.

4thly, That there can be no such case, as hath been pretended, ever to cause a necessity in the House of Commons not to acquaint the Lords with the particulars openly made known to them, by which they were first satisfied to find ground to accuse.

5thly, That the House of Commons, so far judging any article to be treason, as to insist upon commitment, without imparting the particulars to the Lords, do seem therein to usurp that first part of judicature from the Lords, who are the highest court of justice in the kingdom.

6thly, That to require such commitment seems to be contrary to the petition of right and *magna charta*, and the rights not only of the peers and great persons of this kingdom, but the birth-right even of the meanest subjects; and therefore those proceedings not having been according to law and the antient rules of parliament, hath given opportunity to the earl of Clarendon to absent himself.

7thly, The commitment upon a general impeachment hath been heretofore, and may be again, of most evil and dangerous consequence; and, as is conceived, the Lords have yet no way for them so well to justify their fair and upright proceedings in the earl of Clarendon's business, and the true regard they have had herein to the King and kingdom, as to decline this bill of banishment, and to expect a particular accusation of the said earl; and thereupon according to law and justice to appoint him a day for appearance, which if he observe

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observe not, without farther process, sentence might lawfully be pronounced against him.

Strafforde.

We having this day given our negatives to the passing of a bill for the banishing and disenabling the earl of Clarendon; and having asked leave of the House to enter our dissents, to the end that it may appear to posterity that we did not give our consents to that bill, we do now take liberty to enter our dissents, by subscribing our names.

Berkeley of Holles,

T. Culpeper,

Berkeley, Ro. Lexington,

*Die Lune, 22<sup>o</sup> Novembris, 1669.*

*Hodie 3<sup>a</sup> vice lecta est billa,* An act for the limiting of certain trials in parliament and privilege of parliament, and for further ascertaining the trials of peers, and all other his Majesty's liege people.

The question being put, whether this bill shall pass?

It was resolved in the affirmative.

Memorandum, That before the putting the abovesaid question, these Lords following desired leave to enter their dissents, if the question was carried in the affirmative; which being granted, they accordingly enter their dissents, by subscribing their names and reasons following:

We humbly conceive, that if by reason of the great charter, and some acts confirming it, we are not disabled to alien, as to the justiciary and other privileges of parliament and peerage, yet thereby they are indicated so fundamental, as we ought not to part therewith.

Bolingbroke, Stafforde,

Will. Petre.

Dover,

Basil Denbigh,

*Die*



*Die Jovis, 25<sup>o</sup> Novembris, 1669.*

The House resumed the debate which was on Monday last, concerning the business between Bernard Grenville, Esq; and Jeremy Elwes, Esq;

And after a serious debate the question being put, whether this cause be now properly before their lordships for any farther directions to the court of Chancery?

It was resolved in the affirmative.

Memorandum, That before the putting of the abovesaid question, these Lords following desired leave to enter their dissents, if the question was carried in the affirmative; which being granted, they did accordingly enter their dissents, by subscribing their names and annexing their reasons?

1<sup>st</sup>, Because by the death of Morley the suit in Chancery, wherein this House gave direction, seems to us to be abated, and no longer depending there, till it shall be revived by the ordinary course of that court.

2<sup>dly</sup>, Because that court, if the cause do yet depend, have made no final decree upon the former direction of the Lords House.

3<sup>dly</sup>, We know of no precedent, since the first beginning of parliament to this day, nor were any shewed, that ever a decree in Chancery, upon appeal to this House, being reversed, and directions given for a new hearing of the cause in that court, the Lords did resume the cause, and give further directions (before a final decree) at the solicitation of either of the parties, where the lord-keeper or chancellor found no difficulty in proceedings on the first directions.

4<sup>thly</sup>, To admit an appeal or new resort to this House by either party, upon an interlocutory decree, or decretal order, as this was, we conceive would endlessly multiply a cause, be vexatious and chargeable

chargeable to the subject, and put this House to many trials and judgments in the same cause, and take that jurisdiction from the Chancery which is proper for them, *viz.* To mend their own work upon bills of review or reversal, if error or mistake shall be found in their proceedings or decrees.

5thly, If this sort of appeal be allowed to the plaintiff, the like cannot be denied to the defendant, and so *toties quoties*! for there can be no limitation, if either side apprehend danger, and resort to their Lordships for explanation of the former or further directions, until their Lordships set down a rule how often the plaintiff or defendant may resort back to them upon interlocutory proceedings.

6thly, Tho' their Lordships have power upon appeal to reverse any decree of that cause, yet, we humbly conceive, this House will not put the particular equity into the conscience or mouth of the Judge; but that the general direction given in this cause to proceed, as upon an equitable mortgage, is as much as can be done (after the relief already given in laying aside the release and reversing the decree given by the late lord chancellor) till after a final decree either party shall find cause to appeal.

7thly, The further direction their Lordships are moved to give in this cause, is in a point never stirred by the plaintiff in his first appeal, and may, for ought yet appears to their Lordships, never happen in the case, or be made use of in the decree of the court of Chancery to be made; and therefore very improper for the Lords to interpose by anticipation.

8thly, This way of frequent and importunate application to the Lords in the same cause, before it be ripe for hearing of judgment, we conceive to be a dangerous precedent, and both derogatory



rogatory and dilatory to the proceedings of this high court.

Cardigan,	Anglesey,	Effex,
Halifax,	C. Nottingham,	T. Lucas,
J. Bridgewater,	Fauconberg,	

*Die Sabbati, 17<sup>o</sup> Decembris, 1670.*

Upon hearing counsel at the bar upon the petition of Robert Pitt and others, and the answer of Robert Pelham and others;

The question being put, whether the petitioners ought to be relieved upon their petition?

It was resolved in the affirmative.

The question being put, whether the lord-keeper be directed from this House to lay aside the dismission of the bill in Chancery, and that the heir at law of Sherley the testator be ordered by that court to sell the land, and distribute the money according to the direction of the will?

It was resolved in the affirmative.

Memorandum, That before the putting of the abovesaid questions, I desired leave to enter my dissent and protestation, if the questions were carried in the affirmative; which being granted, I do accordingly enter my dissent and protestation as followeth:

That the will, as to the appointment of the sale of the lands in question, being void in law, their is no equity to compel the heir to sell the lands in question to his own disherison; and if it should be otherwise, it would be of a dangerous consequence; for then the lord-keeper might, by the same reason, make good all void wills and other assurances.

Ashley.

*Die Jovis, 9<sup>o</sup> Martii, 1670.*

The House took into consideration the bill concerning privileges of parliament; and for the better

better debate thereof, the House was adjourned into a committee.

The House being resumed, the question was put, whether this bill shall be committed?

And it was resolved in the negative.

Because, I conceive, there is no colour of law to claim a privilege of freedom from suits; and for many other reasons.

Anglesey.

Upon the same grounds the earl of Anglesey.

Holles.

*Die Mercurii, 15<sup>o</sup> Martii, 1670.*

The earl of Dorset reported, that the committee for petitions have considered the petition of John Cusack, but cannot determine whether it came regularly before this House, because they know not whether any appeal lies from the court of claims to the Chancery in Ireland; therefore humbly offers, as an expedient, that this House would order some of the Judges in Ireland to certify, whether an appeal lies from the said court of claims to the Chancery in Ireland.

Upon this, the said petition of John Cusack was read.

And after debate thereupon, the question being put, whether it shall be ordered, that the execution of the judgment against the said John Cusack shall be suspended?

It was resolved in the affirmative.

Dissentient<sup>r</sup> Anglesey:

Because the defendants were never yet summoned nor heard, and are not parties to the judgment; and for many other reasons, very obvious, as I humbly conceive.

*Die Martis, 13<sup>o</sup> Aprilis, 1675.*

The question being put, whether the humble thanks of this House shall be now pre-

G

sented



presented to his Majesty for his most gracious speech?

It was resolved in the affirmative.

Memorandum, That before the putting of the abovesaid question, these Lords following desired leave to enter their dissents, if the question was carried in the affirmative; and accordingly did enter their dissents as followeth:

The question being put to give the King thanks for his speech, and we proposing to thank his Majesty for his gracious expressions in his speech, and it being laid aside, do think fit to enter our dissent to the vote, as it is now passed, because of the ill consequence we apprehend may be from it; and that we think this manner of proceeding not so suitable with the liberty of debate necessary to this House.

Stamford,	Clarendon,	Will. Paget,
Mohun,	Delamer,	Winchester,
P. Wharton,	Salisbury,	Shaftesbury.
Hallifax,		

*Die Mercurii, 21<sup>o</sup> Aprilis, 1675.*

The Lords in a committee of the whole House having debated on the bill to prevent dangers which may arise from persons disaffected to the government;

And the House being resumed, the question was put, whether this bill does so far intrench upon the privileges of this House as it ought therefore to be cast out?

It was resolved in the negative.

Memorandum, That before the putting of the abovesaid question, these Lords following desired leave to enter their dissents, if the question was carried in the negative; and accordingly did enter their dissents as followeth:

We

We whose names are underwritten, being peers of this realm, do, according to our rights, and the ancient usage of parliaments, declare, that the question having been put, whether the bill entitled, An act to prevent the dangers which may arise from persons disaffected to the government, doth so far intrench upon the privileges of this House, that it ought therefore to be cast out, it being resolved in the negative; we do humbly conceive, that any bill which imposeth an oath upon the peers, with a penalty, as this doth, that upon the refusal of that oath they shall be made incapable of sitting and voting in this House; as it is a thing unprecedented in former times, so is it, in our humble opinion, the highest invasion of the liberties and privileges of the peerage that possibly may be, and most destructive of the freedom which they ought to enjoy as members of parliament, because the privilege of sitting and voting in parliament is an honour they have by birth, and a right so inherent in them, and inseparable from them, that nothing can take it away, but what, by the law of the land, must withal take away their lives, and corrupt their blood: upon which ground we do here enter our dissent from that vote, and our protestation against it.

Buckingham,	Salisbury,	Basil Denbigh,
Howard, E. of Berks,	Mohun,	Stamford,
Delamer,	Halifax,	Holles,
Clarendon,	P. Wharton,	Ro. Eure,
Bedford,	Dorset,	Bristol,
Winchester,	J. Bridgewater,	Shaftesbury,
Ailsbury,	Say and Seale,	Will. Paget.
Grey de Rolleston,	Will. Petre,	

*Die Lune, 26<sup>o</sup> Aprilis, 1675.*

The bill last mentioned having been began again long debated in a committee of the whole House.



And the House being resumed, the question was put, whether the bill shall be committed to a committee of the whole House?

It was resolved in the affirmative.

Memorandum, That before the putting of the abovesaid question, these Lords following desired leave to enter their dissent, if the question was carried in the affirmative; and accordingly did enter their dissent as followeth:

The question being put, whether the bill entitled, An act to prevent the dangers which may arise from persons disaffected to the government, should be committed? It being carried in the affirmative; and we, after several days debate, being in no measure satisfied, but still apprehending that this bill doth not only subvert the privilege and birth-right of the peers, by imposing an oath upon them, with the penalty of losing their place in parliament, but also, as we humbly conceive, does strike at the very root of government, it being necessary to all governments to have freedom of votes and debates in those who have power to alter and make laws; and besides, the express words of this bill obliging every man to abjure all endeavours to alter the government in the church, without regard to any thing that rules of prudence in government, or christian compassion to protestant dissenters, or the necessity of affairs at any time shall or may require: upon these considerations, we humbly conceive it too of dangerous consequence to have any bill of this nature so much as committed, to enter our dissent from that vote, and protestation against it.

Buckingham,	Winchester,	Basil Denbigh,
Stamford,	Shaftesbury,	Mohun,
Salisbury,	Clarendon,	Delamer,
Bristol,	Howard, E. of Berks,	P. Wharton.

*Die Jovis, 29<sup>o</sup> Aprilis, 1675.*

Offence being taken at divers expressions in the foregoing protestation, the Lords who signed the same severally and voluntarily declared they had no intention to reflect upon any member, much less upon the whole House, and debate had on some questions propounded.

The question was put, whether that the reasons given in the protestation entered the 26th of this instant April do reflect upon the honour of this House, and are of dangerous consequence?

It was resolved in the affirmative.

Memorandum, That before the putting of the abovesaid question, these Lords following desired leave to enter their dissent, if the question was carried in the affirmative; and accordingly did enter their dissent as followeth:

Whereas it is the undoubted privilege of every peer in parliament, when a question is passed contrary to his vote and judgment, to enter his protestation against it; and that in pursuance thereof the bill entitled, An act to prevent the dangers which may arise from persons disaffected to the government, being conceived by some Lords to be of so dangerous a nature, as that it was not fit to receive so much as the countenance of a commitment, those Lords did protest against the committing of the said bill; and the House having taken exceptions at some expressions in their protestation, those Lords, who were present at the debate, did all of them severally and voluntarily declare, that they had no intention to reflect upon any member, much less upon the whole House; which, as is humbly conceived, was more than in strictness did consist with that absolute freedom of protesting, which is inseparable from every mem-



ber of this House, and was done by them more out of their great respect to the House, and their earnest desire to give all satisfaction concerning themselves and the clearness of their intentions; yet the House not satisfied with this their declaration, but proceeding to a vote, That the reasons given in the said protestation to reflect upon the honour of the House, and are of dangerous consequence; which is, in our humble opinion, a great discountenancing of the very liberty of protesting; we, whose names are underwritten, conceiving ourselves and the whole House of Peers extremely concerned, that this great wound should be given (as we do in all humility apprehend) to so essential a privilege of the whole peerage of this realm, as is their liberty of protesting, do now (according to our unquestionable right) make use of the same liberty to enter this our dissent from, and protestation against the said vote.

Buckingham,	Baf. Denbigh,	Salisbury,
Aylesbury,	Holles,	Fitzwalter,
Winchester,	Bedford,	Shaftesbury,
Clarendon,	Say and Seale,	Halifax,
Delamer,	Dorset,	J. Bridgewater,
Howard, E. of Berks,	Mohun,	P. Wharton,
R. Eure,	Grey de Rolle.	Audley.

*Die Martis, 4<sup>o</sup> Maii, 1675.*

The House was adjourned into a committee to proceed in the debate of the matter yesterday reported, touching the bill to prevent the dangers which may arise from persons disaffected to the government.

The House being resumed, the lord privy seal reported, That the committee have been in debate of adding these words to the first enacting clause in the said bill, after the words (justice of the peace) *or have or shall have right to sit and vote*

*in*

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*in either House of Parliament, and do think it fit, that those words be added to that clause, after the words (justices of the peace.)*

The question being put, whether to agree with the committee herein?

It was resolved in the affirmative.

Memorandum, That before the putting of the abovesaid question, these Lords following desired leave to enter their dissents, if the question was carried in the affirmative, and accordingly did enter their dissents as followeth:

Whereas upon the debate on the bill, entitled, An act to prevent the dangers which may arise from persons disaffected to the government, it was ordered by the House of Peers, the 30th of April last, that no oath shall be imposed by any bill or otherwise upon the peers, with a penalty, in case of refusal, to lose their places and votes in parliament, or liberty of debates therein; and whereas also upon debate of the said bill, it was ordered, the 3d of this instant May, that there shall be nothing in this bill which shall extend to deprive either of the Houses of Parliament, or any of their members, of their just, ancient freedom and privilege of debating any matters or business which shall be propounded or debated in any of the said Houses, or at any conferences or committees of both or either of the said Houses of Parliament, or touching the repeal or alteration of any old, or preparing any new laws, or the redressing of any public grievance; but that the said members of either the said Houses, and the assistants of the House of Peers, and every of them, shall have the same freedom of speech, and all other privileges whatsoever, as they had before the making of this act; both which orders were passed as previous directions to the committee of the whole House, to whom the said bill was committed, to



the end that nothing should remain in the said bill, which might any ways tend towards the depriving of either of the Houses of Parliament, or any of their members, of their ancient freedom of debates or votes, or any other of their privileges whatsoever; yet the House being pleased, upon the report of the said committee, to pass a vote, that all persons who have or shall have a right to sit and vote in either House of Parliament, shall be added to the first enacting clause in the said bill, whereby an oath is to be imposed upon the members of either Houses; which vote, we whose names are underwritten, being peers of this realm, do humbly conceive is not agreeable to the said two previous orders; and it having been humbly offered and insisted upon by divers of us, that the proviso in the late act, intituled, An act for preventing dangers which may happen from Popish recusants, might be added to the bill depending, whereby the peerage of every peer of this realm, and all their privileges, might be preserved in this bill, as fully as in the said late act; yet the House not pleasing to admit of the said proviso, but proceeding to the passing of the said vote, we do humbly, upon the grounds aforesaid, and according to our undoubted right, enter this our dissent from, and protestation against the same.

Buckingham,	Bedford,	Basil Denbigh,
Howard, E. of Berks,	Clarendon,	Shaftesbury,
P. Wharton,	Delamer,	Winchester,
Stamford,	Mohun,	R. Eure,
Salisbury,	J. Bridgewater,	Dorset.

*Die Jovis, 6<sup>o</sup> Maii, 1675.*

The Commons by message signified they were informed, an appeal was depending before the Lords at the suit of Sherley, against Sir John Fagg, a member of their House, to which he is ordered

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ordered to answer; they therefore desired their Lordships to have regard to their privileges.

Which message being considered, the question was put, whether this answer shall be now returned to the said message, *viz.* That the House of Commons need not doubt but their Lordships will have a regard to the privileges of the House of Commons, as they have of their own?

It was resolved in the affirmative.

Memorandum, That before the putting of the aforesaid question, these Lords following desired leave to enter their dissents, if the question was carried in the affirmative, and accordingly they do enter their dissents.

Because the answer voted to be sent to the House of Commons being the same that was sent down formerly in the case of Hale and Slingsby, hath, as we, with all humility, do apprehend, been already mistaken by them, as a condescension of this House to forbear proceeding in judicature in affairs of this nature, and appears to us very liable to so great a misconstruction, that it may seem, in some measure, to acknowledge that the House of Commons have a claim to some privilege in judicature, which is a thing that, we conceive, belongs solely to this House.

Bedford,

T. Culpeper,

Howard, E. of Berks,

Newport, Basil Denbigh,

Bristol,

Dorset,

J. Bridgewater,

Shaftsbury.

*Die Lunæ, 10<sup>o</sup> Maii, 1675.*

*Post Meridiem.*

The House having heard the council of Dacre Barret, plaintiff, and also the council of the lord viscount Loftus, defendant, upon an appeal, desiring that a decree made in parliament the 3d of May 1642, on behalf of the said viscount, may  
be



be reversed; and after long debate and consideration thereof,

The question was put, whether this decree shall be affirmed?

It was resolved in the negative.

We whose names are underwritten, having, before the putting of the said question, desired leave of the House to enter our protestation, if the same were carried in the negative, do accordingly enter our dissent and protestation for the reasons following:

1st, Because this resolution retains a complaint, which, upon weighty grounds, appearing in the judgment of parliament, and in the pleadings in this cause, as we humbly conceive, ought to be dismissed.

2dly, It is a very dangerous precedent, and may be of ill consequence to the judicatory of this high court, if not destructive thereunto, after above three and thirty years to shake a judgment made against an extrajudicial decree of the council-board in Ireland, grounded on a supposed parole agreement pretended to be made four and fifty years ago, and built upon a single testimony, various in itself, for manors and lands of inheritance, of a great yearly value, and wholly destructive to the family of a viscount of that kingdom; and all this, after the said judgment fully executed, after settlement of marriage, for great and valuable considerations, made upon the heirs male of the family for support of the honour to them descendable, and divers leases and contracts touching several parts of the estate, and a great portion of the sister paid, chargeable on the premises, and great debts of the lord chancellor Loftus; and part thereof sold and other part mortgaged; all which transactions have been founded upon the said judgment in parliament, and the said estate quietly enjoyed under it ever since.

3dly,

3dly, Because it seems to us unreasonable, and very insecure for the subject, that such a judgment, upon the last resort, vacating a decree, vicious both in form and matter, and making a full settlement between the parties, should, after most of the witnesses dead, and after those under whom the now complainant claims, their submission thereunto, and taking benefit by the execution thereof, and receiving some thousands of pounds thereupon, be drawn into question, and the merits of the cause reheard, much less, that new matters should be admitted in a cause so concluded.

4thly, We conceive the plea of the lord Loftus, upon the matters aforesaid, to be good and valid in law.

5thly, That to admit a rehearsing can only tend to impoverish the parties and increase divisions between near relations, which the honour and wisdom of this high court ever endeavours to prevent.

Anglesey, Shaftesbury, Carlisle,  
W. Widdrington, Vaugh. Carbery, Bas. Denbigh.

*Die Jovis, 27<sup>o</sup> Maii, 1675.*

A message was brought from the House of Commons by Sir Thomas Lee and others, to this effect, That the House of Commons heretofore did desire a conference touching their privileges in the case of Mr. Onslow, and their Lordships returned for answer, That their Lordships would send an answer by messengers of their own: the House of Commons looks upon this as a case of great consequence to the privileges of their House; and therefore now desire a conference concerning the privileges of their House in the case of Mr. Onslow.

The Lords entered into a serious debate of this message, and a paper was offered to the House as an answer to be returned to this message. The said paper was read as follows:

The



The Lords have considered of their message, and shall be ever ready to grant the House of Commons a conference in any thing which may concern the privileges of their House; but they find that the desire of this conference is upon the same ground with the former message of the 21st instant, which was upon the answer sent by the Lords in the case of Mr. Onslow of the 17th instant, wherein the whole case concerns the judicature of the Lords, on which they can admit of no debate, nor grant any conference.

The question being put, whether the answer which shall be returned to this message from the House of Commons shall be the substance contained in this paper?

It was resolved in the negative.

Memorandum, Before the putting of the above-said question, these Lords following desired leave to enter their dissents, if the question was carried in the negative; which accordingly they did.

Because they do humbly conceive this question, being carried in the negative, deprives this House of the advantage of making use of that answer to the House of Commons, which would have been the surest way to have justified and preserved the right of the Lords of judicature upon this occasion.

Grey de Rolleston, Stamford, Mohun,  
J. Bridgewater.

*Die Jovis, 24<sup>o</sup> Novembris, 1675.*

The Lords in a committee of the whole House, having debated upon appointing a day for hearing the appeal of Dr. Sherley against Sir John Fagg.

And the House being resumed, the question was put, whether the 20th day of this instant November shall be the day appointed for the hearing of the cause between Dr. Thomas Sherley and Sir John Fagg.

It was resolved in the affirmative.

Before

Before the putting of the said question, leave being demanded and given to such Lords as thought fit (if the same were carried in the affirmative) to enter their protestation and dissent; accordingly this protestation is entered against the said vote, for the reasons following:

1st, Because it seems contrary to the use and practice of this high court (which gives example to all other courts) upon a bare petition of the plaintiff Dr. Sherley, in a cause depending last session, and discontinued by prorogation, to appoint a day for hearing of the cause before the defendant is so much as summoned, or appears in court, or to be alive.

2dly, The defendant, by the rules of this court, having liberty upon summons to make a new answer, as Sir Jeremy Whitchcott was admitted, after summons, to do last session in Darrell's cause against him, discontinued by prorogation, or to mend his answer, or to plead as he shall see cause, is deprived of this and other benefits of law, by appointing a day of hearing without these essential forms.

3dly, It appears, by the plaintiff's own shewing in his petition, that his case against a purchaser is not relieveable in equity; and therefore ought to be dismissed without putting the parties to a further charge.

4thly, It appears, by his own shewing, and the defendant Sir John Fagg's plea, that he comes hither *per saltum*, and ought to attend judgment in the inferior courts, if his case is relieveable, and not to appeal to the highest court, till either injustice is done him below, or erroneous judgment given against him, and relief denied him upon review.

5thly, The danger of this precedent is so universal, that it shakes all the purchasers of England.

Anglesey.

Die



*Die Sabbati, 20<sup>a</sup> Novembris, 1675.*

It was moved, that this House might make an humble address to his Majesty for the dissolution of this parliament; which being long and seriously debated,

Contents 41 } The question was put thereupon?

Proxies 7 } 48 And,

NotCont. 34 } It was resolved in the nega-

Proxies 19 } 50 tive.

We whose names are underwritten, peers of this realm, having proposed, That an humble address might be made to his Majesty from this House, that he would be graciously pleased to dissolve this parliament, and the House having carried the vote in the negative; for the justification of our loyal intentions towards his Majesty's service, and of our true respect and deference to this honourable House, and to shew that we have no sinister or indirect ends in this our humble proposal, do, with all humility, herein set forth the grounds and reasons why we were of opinion that the said humble address should have been made.

1<sup>st</sup>, We do humbly conceive, that it is according to the ancient laws and statutes of this realm, that there should be frequent and new parliaments, and that the practice of several hundred years hath been accordingly.

2<sup>dly</sup>, It seems not reasonable, that any particular number of men should, for many years, ingross so great a trust of the people, as to be their representatives in the House of Commons, and that all other the gentry, and the members of corporations of the same degree and quality with them, should be so long excluded; neither, as we humbly conceive, is it advantageous to the government, that the counties, cities and boroughs should be confined for so long a time to such members

bers as they have once chosen to serve for them; the mutual correspondence and interest of those who choose, and are chosen, admitting great variations in length of time.

3dly, The long continuance of any such who are intrusted for others, and who have so great a power over the purse of the nation, must, in our humble opinion, naturally endanger the producing of factions and parties, and the carrying on particular interests and designs, rather than the public good.

And we are the more confirmed in our desires for the said humble address, by reason of this unhappy breach fallen out betwixt the two Houses, of which the House of Peers hath not given the least occasion, they having done nothing but what their ancestors and predecessors have in all time done, and what is according to their duty, and for the interest of the people that they should do; which notwithstanding the House of Commons have proceeded in such an unprecedented and extraordinary way, that it is, in our humble opinion, become altogether impracticable for the two Houses, as the case stands, jointly to pursue those great and good ends for which they were called. For these reasons we do enter this our protestation against, and dissent unto, the said vote.

Buckingham,	Salisbury,	J. Bridgewater,
Shaftsbury,	Mohun,	F. Fauconberg,
Dorset,	Stamford,	Halifax,
Newport,	H. Sandys,	Winchester,
Westmoreland,	Howard,	E. Yarmouth,
P. Wharton,	of Berks,	Chesterfield,
Delamer,	Clarendon,	Will. Petre.
Grey de Rolleston,	Townshend,	

*Die Jovis, 15<sup>o</sup> Martii, 1676.*

*Hodie 3<sup>a</sup> vice lecta est billa,* An act for further securing the protestant religion by education of the children



children of the royal family therein, and providing for the continuance of a protestant clergy.

The question being put, whether this bill shall pass?

It was resolved in the affirmative.

Dissentient' Anglesey:

For many weighty reasons, which, in humble deference and submission to the major vote, by which the bill was carried, I forbear to enter particularly.

*Die Veneris, 7<sup>o</sup> Junii, 1678.*

This day being appointed to debate the business for the petitioner that claims the title of viscount Purbeck, the House took into consideration in what method to proceed therein, whether upon the whole matter together, or divide it into parts.

And the question being put, whether to proceed in this case upon the whole matter?

It was resolved in the affirmative.

Before the question was put for proceeding in the case of the claim for the title of viscount Purbeck, leave being asked and granted to enter protests, if it was carried in the affirmative; we accordingly do enter our dissent, because there being three points arising from the debate of the case;

The first of illegitimacy;

The second concerning the being of a patent of honour, which are matters of fact, and ought to be determined before the point of law, which is the third point, concerning the extinguishing of honour by a fine; which by this House, in a full assembly, hath been adjudged (*nemine contradicente*) cannot legally be done; and that we cannot, upon complicated and accumulative questions, give a resolution; nor hath the practice been so, but upon the case agreed, or single propositions, except where the House is unanimous in judgment; whereas,

whereas, in this case, they appear yet much divided.

Oxford,	Huntingdon,	Bedford,
Northampton,	Clare,	Tho. Culpeper,
Anglesey,	J. Bridgewater,	Bathe.
Winchester,	Shaftsbury,	

*Die Jovis, 20<sup>o</sup> Julii, 1678.*

The Lords proceeding this day, which was appointed, to give judgment in the case concerning the claim and right of Robert viscount Purbeck to that title of honour, to them referred by his Majesty; and three questions being, after debate, propounded as follow:

1. That the petitioner hath right, by law, to be admitted according to his title.

2. That this question shall be now put.

3. That the King shall be petitioned to give leave that a bill may be brought in to disable the petitioner to claim the title of viscount Purbeck.

And leave being asked and given, before the putting of the said questions, to any Lords to enter their dissents and protestations to them, if they or any of them were resolved in the affirmative, as the second and last were; we whose names are underwritten, do accordingly protest against the said resolutions, for the reasons following:

1st, The Lords being in judgment, as the highest court of England, in a case referred to them by his Majesty (and whereof they are the only proper judges) concerning the right of nobility claimed by a subject that is under no forfeiture, and wherein their Lordships had, in part, given judgment before, that he was not (nor could be) barred thereof by a fine and surrender of his ancestor; it was, as we humbly conceive, against common right and justice, and the orders of this House, not to put the question that was propounded for determining the right.

H

2dly,



2dly, The said claimant's right (the bar of the fine of his ancestor being removed) did, both at the hearing at the bar, and debate in the House, appear to us clear, in fact and law, and above all objections.

3dly, His said right was acknowledged even by those Lords, who therefore opposed the putting of the main question for adjudging therefore, and carried the previous question (that it should not be put) because, in justice, it must inevitably (if it had been put) have been carried in the affirmative, and his right thereby allowed.

4thly, By putting and carrying the third question concerning leave to bring a bill to bar him, his right to the said title is confessed, for he cannot be debarred of any thing which he hath not a right to; and this renders the proceedings in this case contradictory and inconsistent.

5thly, The petitioning the King to give leave for such a bill to be brought in, is to assist one subject, viz. the duke of Buckingham, against another, in point of right, wherein judges ought to be indifferent and impartial.

6thly, This way of proceeding is unprecedented, against the law and common right, as we humbly conceive, after fair verdicts, and judgments in inferior courts upon title of lands, which have long been in peace, and vested in the claimer by descent, without writ of error brought, or appeal, to suffer the same to be shaken or drawn in question by a bill.

7thly, This way by bill, in a case of nobility, is to admit the Commons with us into judicature of Peers.

8thly, It is to make his Majesty party in a private case against a clear right, to anticipate and pre-engage his judgment in a case, carried upon great division, and difference of opinion in the House,

House, and forestalls his Majesty's royal power and prerogative, which ought to be free, to assent or dissent to bills when they shall be tendered to him by both Houses.

9thly, After so many years delay to give no answer to his Majesty's reference, nor judgment in the claimer's case, is a way, in which the Kings of this realm have not been heretofore treated, nor the subjects dealt with.

10thly, We conceive this course, in the arbitrariness of it, against rules and judgments of law, to be derogatory from the justice of parliament, of evil example, and of dangerous consequence both to Peers and Commoners.

Oxford, Danby, Tho. Culpeper,  
Hunfdon, Anglesey, Northampton.  
Lawarr,

*Die Martis, 9<sup>o</sup> Julii, 1678.*

The petition reported formerly by a committee, to be presented to his Majesty, that he would give leave to bring in a bill to disable the petitioner from claiming a title to viscount Purbeck, was read, and some amendments made therein.

And the question being put, whether this petition, thus amended, shall be presented to the King?

It was resolved in the affirmative.

Dissentient' Anglesey and Northampton:

For these reasons: 1st, That this is a transition from our judicature in a case of nobility, wherein the Lords are sole judges, to the exercise of the legislature, wherein the Commons have equal share with us, and admits them judges of peerage, which I conceive ought not to be, if he be a Peer, as seems implied, by proposing a law to bar his title; and there is no need of a law, if he be no Peer.



2dly, If a bill come in, the case must be heard again, and then judgment ought to be given, which (if against him) the Commons must credit upon the proofs made here, where only witnesses are sworn; and therefore judgment here ought to be final.

3dly, This petition is no answer to his Majesty's reference, and we leave him in incertainty, when he asks our opinion; or desired the royal assent to nothing, if he hath no title to be barred.

4thly, If the Commons should reject a bill sent to them, they establish him a Peer, by judging it injurious to bar him by a law, and so would seem more tender of peerage than we.

5thly, Leave is asked of his Majesty, to bring in a bill, when every Peer hath right to do it in this case, if he conceive himself aggrieved by a false claim of honour; and therefore several Lords have been admitted parties against him upon former hearings, and judgment given, in part, for him by a vote, that he is not barred by the fine of his father.

6thly, It seems against common right to bar any by bill, who claims a legal title, without forfeiture be in case, and if so, there needs no bill.

Memorandum, These six reasons are written by the lord privy seal's own hand.

*Die Veneris, 6<sup>o</sup> Decembris, 1678.*

An address to desire his Majesty to cause Popish recusants, reputed ones, and suspected Papists to be apprehended, disarmed and secured, was brought from the Commons and read.

And after some debate, the question was put, whether to agree to this address as it is now worded?

It was resolved in the affirmative.

Dissentient?

Dissentient?

For that it is humbly conceived to be contrary to, and against law in several particulars, and both unjustifiable and dangerous for those that put it in execution.

Northampton, Anglesey, Ferrers.

*Die Martis, 25<sup>o</sup> Martii, 1679.*

*Hodie 2<sup>a</sup> vice lecta est billa,* An act for disabling Thomas earl of Danby.

And after some debate, the question being put, whether this bill shall be now committed?

It was resolved in the affirmative.

Dissentient? Anglesey; for these reasons:

1st, Because no summons or hearing of the party is first directed, which, by the essential forms of justice, ought to be.

2dly, Because it is conceived this will be error.

3dly, Because it is a dangerous precedent against all the Peers, to have so penal a bill precipitated.

4thly, Because no committee can proceed on any bill without hearing parties, and no Peer is to be tried in parliament, but by the whole House of Peers.

Having given my vote against the bringing in an act, entitled, An act for the disabling Thomas earl of Danby; and voting against the commitment of the bill, I enter my dissent. Berkeley.

*Die Veneris, 2<sup>o</sup> Maii, 1679.*

*Hodie 3<sup>a</sup> vice lecta est billa,* An act for freeing the city of London and parts adjacent from Popish inhabitants.

The question was proposed, whether this bill shall be amended?

Then this previous question was put, whether this question shall be now put?

It was resolved in the negative.



Then the question was put, whether this bill shall pass?

It was resolved in the affirmative.  
Dissentient.

Because this House hath sent down a bill to the House of Commons, for the better discovery and speedy conviction of Popish recusants, wherein the conviction of recusancy was for refusing the test, and not the oaths; the same bill was sent down from this House about the end of the last parliament.

As also because there are thousands of dissenters that will be faithful, even to death, against the common enemies the Papists, which, by the addition of the oaths to the test, may be tempted to think themselves, in interest, obliged to take the Papists parts against us.

Shaftsbury, Pr. Huntingdon, Stamford,  
Berkeley, Kent, Delamer.  
Derbey, Chandos,

*Die Luna, 15<sup>o</sup> Novembris, 1680.*

*Hodie 1<sup>a</sup> vice lecta est billa,* An act for securing the protestant religion, by disabling James duke of York to inherit the imperial crown of England and Ireland, and the dominions and territories thereunto belonging.

After debate, the House was adjourned into a committee for the freer debate.

The House being resumed, it was propounded, that the question may be put for rejecting this bill.

Contents 61 The question was put, whether the  
Not Cont. 32 question for rejecting this bill  
shall be now put?

It was resolved in the affirmative.

Contents 63 Then the question was put, whether  
Not Cont. 32 this bill shall be rejected?

It was resolved in the affirmative.

Dissentient.

Because rejected upon the first reading. Crew.

*Die*

*Die Martis, 23<sup>o</sup> Novembris, 1680.*

The question was propounded, whether there shall be a committee appointed in order to join with a committee of the House of Commons, to debate matters concerning the state of the kingdom.

The question being put, whether this question shall be now put?

It was resolved in the affirmative.

Then the main question was put, whether there shall be a committee appointed in order to join with a committee of the House of Commons, to debate matters concerning the state of the kingdom?

It was resolved in the negative.

These Lords following, before the abovesaid question was put, desired leave to enter their dissents, if the question was carried in the negative; and accordingly do enter their dissents and reasons following:

Because we are fully convinced, in our judgments, that the conferring of the Lords with the Commons, by a joint committee of both Houses, is the most likely way to produce a good understanding between them, which we take to be most necessary at this time for the safety of the King's person, and the security of the protestant religion against the bloody designs of the Papists, as also for the redress of other grievances, which the nation at this time lies under.

Buckingham,	Bedford,	Stamford,
Kent,	Essex,	Westmoreland,
Paget,	J. Lovelace,	Brooke,
Salisbury,	Macclesfield,	Monmouth,
Clare,	Sunderland,	P. Wharton,
Mulgrave,	Delamer,	F. Herbert.



*Die Jovis, 25° Novembris, 1680.*

A petition of James Percy was read, desiring a day may be appointed for him to be heard to make out his title to the earldom of Northumberland.

The question was put, whether this petition shall be rejected?

It was resolved in the affirmative.

Before the question was put, the earl of Anglesey desired leave to enter his dissent, if the question was carried in the affirmative; and accordingly enters his dissent.

Dissentient<sup>r</sup> Anglesey; for these reasons:

1st, Because the claim brought by Mr. Percy can be heard, examined and adjudged only in this House.

2dly, It is a right due to the subject to petition this House, and the cause is not to be under prejudice or rejected till heard.

3dly, It seems unprecedented, and against common right and the constant course of parliamentary justice.

4thly, By such a way of proceeding he is barred of his appeal from a dismiss in a former parliament, which he can only have in this parliament, before the grounds thereof are so much as examined.

*Die Veneris, 7° Januarii, 1680.*

Articles of impeachment against Sir William Scroggs, of high treason, and other great crimes and misdemeanors, brought from the Commons and read.

And a question for committing him being propounded,

The previous question was put, whether this question shall be now put?

It was resolved in the negative.

Dissentient<sup>r</sup>

## Dissentient

1st, We that are of opinion, that he ought to be committed, are deprived of giving our votes, by putting only the question of bail, we being rather for bail than to let him go altogether free.

2dly, We are of opinion, that this matter hath been twice adjusted betwixt both Houses, viz. in the case of the earl of Clarendon, and the case of the earl of Danby.

Besides, we did think it very unsafe, and not agreeable to justice, that he should be at large and execute his place of lord chief justice, whilst he lies under the charge of an impeachment of high treason.

Lastly, It may deter the witnesses, when they shall see him in such great power and place, whom they are to accuse.

Kent,	Essex,	Cornwallis,
Salisbury,	P. Wharton,	Suffolke,
Macclesfield,	Clare,	Howard,
Huntingdon,	Bedford,	Grey,
Shaftesbury,	Manchester,	Paget,
F. Herbert,	Rockingham,	Rivers,
Monmouth,	Stamford,	Crewe.

*Die Sabbati, 26<sup>o</sup> Martii, 1681.*

A message was brought from the House of Commons by Sir Leolin Jenkins and others, in these words: “ The Commons of England assembled  
 “ in parliament, having received information of  
 “ divers traiterous practices and designs of Edward Fitzharris, have commanded me to impeach the said Edward Fitzharris, of high treason; and I do here in their names, and in the names of all the Commons of England, impeach Edward Fitzharris of high treason: they have further commanded me to acquaint your Lordships, that they will, within convenient  
 “ time,



“ time, exhibit to your Lordships the articles of charge against him.”

Mr. Attorney-general gave the House an account of the examinations taken against Edward Fitzharris, and said, He had an order of the King's, dated the 9th of March instant, to prosecute the said Fitzharris at law; and accordingly he hath prepared an indictment against him at law.

And after long debate, the question was put, whether Edward Fitzharris shall be proceeded with according to the course of the common law, and not by way of impeachment in parliament at this time?

It was resolved in the affirmative.

Memorandum, That before the putting of the abovesaid question, leave was asked for entering protestations; which was granted.

Dissentient?

Because that in all ages it hath been an undoubted right of the Commons to impeach before the Lords any subject for treasons, or any crime whatsoever; and the reason is, because great offences, that influence the government, are most effectually determined in parliament.

We cannot reject the impeachment of the Commons, because that suit or complaint can be determined no-where else; for if the party impeached should be indicted in the King's-Bench, or in any other court, for the same offence, yet it is not the same suit; for an impeachment is at the suit of the people, and they have an interest in it; but an indictment is at the suit of the King: for one and the same offence may intitle several persons to several suits; as, if a murder be committed, the King may indict at his suit; or the heir, or the wife of the party murdered, may bring an appeal, and the King cannot release that appeal, nor his indictment prevent the proceedings in the appeal,

peal, because the appeal is the suit of the party, and he hath an interest in it.

'Tis, as we conceive, an absolute denial of justice, in regard (as 'tis said before) the same suit can be tried no where else: the House of Peers, as to impeachments, proceed by virtue of their judicial power, and not by their legislative; and as to that act, as a court of record, and can deny suitors (especially the Commons of England) that bring legal complaints before them, no more than the justices of Westminster-Hall, or other courts, can deny any suit or criminal cause that is regularly commenced before them.

Our law saith, in the person of the King, *Nalli negabimus justitiam*, We will deny justice to no single person; yet here, as we apprehend, justice is denied to the whole body of the people.

And this may be interpreted an exercising of an arbitrary power, and will, we fear, have influence upon the constitution of the English government, and be an encouragement to all inferior courts to exercise the same arbitrary power, by denying the presentments of grand juries, &c. for which at this time the chief justice stands impeached in the House of Peers.

This proceeding may misrepresent the House of Peers to the King and people, especially at this time, and the more in the particular case of Edward Fitzharris, who is publicly known to be concerned in vile and horrid treasons against his Majesty, and a great conspirator in the Popish plot to murder the King, and destroy and subvert the protestant religion.

Kent,	Salisbury,	Crewe,
Shaftesbury,	Paget,	P. Wharton,
Macclesfield,	Cornwallis,	Mordaunt,
Herbert,	Huntingdon,	Grey,
Bedford,	Clare,	Monmouth,
Stamford,	Sunderland,	J. Lovelace.
Westmoreland,	Essex,	



*Die Veneris, 22<sup>o</sup> Maii, 1685.*

Upon consideration of the cases of the earl of Powis, lord Arundell of Warder, the lord Belafis, and the earl of Danby, contained in their petitions,

After some debate, the question was put, whether the order of the 13th of March, 1678-9, shall be reversed and annulled, as to the continuance of impeachments, in *statu quo*, from parliament to parliament?

It was resolved in the affirmative.

According to the right of peers to enter their dissent and protestation against any vote, propounded and resolved upon any question in parliament, we do enter our dissent and protestation to the aforesaid vote or resolution, for these reasons, among many others:

1st, Because it doth, as we conceive, extrajudicially, and without a particular cause before us, endeavour an alteration in a judicial rule and order of the House in the highest point of their power and judicature.

2dly, Because it shakes and lays aside an order made and renewed upon long consideration, debate, report of committees, precedents, and former resolutions, without permitting the same to be read, tho' called for by many of the peers, and against weighty reasons, as we conceive, appearing for the same, and contrary to the practice of former times.

3dly, Because it is inherent in every court of judicature to assert and preserve the former rules of proceedings before them; which therefore must be steady and certain, especially in this high court, that the subject, and all persons concerned, may know how to apply themselves for justice; the very Chancery, King's-Bench, &c. have their settled

tled rules and standing orders, from which there is no variation.

Anglesey, Clare, Stamford.

*Die Lune, 25<sup>o</sup> Maii, 1685.*

Elizabeth Harvey having brought a petition on Saturday last against a decree in Chancery, in favour of Sir Thomas Harvey, and consideration had concerning the same,

The question was put, that this House will not proceed upon the petition of Mrs. Harvey until she doth personally appear, having the protection of this House, or give sufficient security to perform such order as this House shall make?

It was resolved in the affirmative.

Dissentient<sup>r</sup>

I do dissent to this vote, being a heavy and unprecedented obstruction to judicature and appeals.

Anglesey.

*Die Mercurii, 3<sup>o</sup> Junii, 1685.*

Upon report from the committee of the whole House, on the bill for reversing the attainder of the lord viscount Stafford.

The question was put, whether this bill, with the amendments, shall be engrossed?

It was resolved in the affirmative.

Dissentient<sup>r</sup>

1<sup>st</sup>, Because the assertion in the bill, of its being now manifest that the viscount Stafford died innocent, and that the testimony on which he was convicted was false, which are the sole grounds and reasons given to support the bill, are destitute of all proof, warrant, or testimony of witness, or matter of record before us.

2<sup>dly</sup>, That



2dly, That the record of the King's-Bench read at the committee concerning the conviction, last term, of one of the witnesses for perjury in collateral points of proof, of no affinity to the lord Stafford's trial, and given several years before, 'tis conceived, can be no ground to invalidate the testimony upon which the said viscount was convicted, which could never legally be by one witness, and was, in fact, by the judgment of his peers, on the evidence of at least three.

3dly, It's conceived, the said judgment in the King's-Bench, and the whole proceedings, were unprecedented, illegal and unwarrantable, highly derogatory to the honour, judicature and authority of this court, who have power to question and punish perjuries of witnesses before them, and ought not to be imposed upon by the judgments of inferior courts, or their attainders of a peer, invalidated by implication; and the popish plot so condemned, pursued and punished by his Majesty and four parliaments, after publick solemn devotion through the whole kingdom, by authority of church and state, to be eluded to the arraignments and scandal of the government, and only to be restoring of the family of one popish lord; and all this being without any matter judicially appearing before us to induce the same, and the records of that trial not suffered to be read for information of the truth before the passing of the bill.

Lastly, For many other weighty reasons offered and given by divers peers in the two days debate of this bill, both in the committees and the house.

Anglesey.

*Die Jovis, 4<sup>o</sup> Junii, 1685.*

*Hodie 3<sup>a</sup> vice lecta est billa,* An act for reversing the attainder of William late viscount Stafford.

The

The question being put, whether this bill shall pass?

It was resolved in the affirmative.

Dissentient?

I Anglesey protest against this bill's passing, for the same reasons entered the day before.

I protest against this bill, because the preamble was not amended, and no defect in point of law alledged as a reason for the reversal of the attainder. Clare.

*Die Mercurii, 6° Martii, 1688.*

*Hodie 3<sup>a</sup> vice lecta est billa,* An act for the better regulation of trials.

The question was put, whether this bill shall pass?

It was resolved in the affirmative.

Leave was given to any lords to enter their dissents; and accordingly these lords following, entered their dissents in the reasons following:

1st, Because nothing ever was or may be put into an act of parliament, that can reflect so much upon the honour of the peerage as this will.

2dly, Because this sets the honour of the Peers and the Commons upon an equal foot.

3dly, Because such persons as may have causes to be heard at the bar of this House will not be so confident of the justice of the Peers, and consequently be jealous of the right that may be expected upon impeachments.

4thly, Because this strikes at the root of all the privileges of the Peers, most of which they claim by reason of the great regard that the law has to the honour and integrity of the Peers above that of the Commons; the statute *de Scandalis Magnatum* being enacted for that reason only.

5thly, Because it will be, in some sort, a mark of reproach upon every Peer who shall be challenged, unless there be very great and apparent cause for it.

6thly,



6thly, Because this will tend to maintain feuds and animosities amongst the Peers.

7thly, Because, at this time, it is unreasonable, considering the late disputes and divisions that have been in this House.

8thly, Because the honour of every man, much more of a Peer, is, or ought to be more valuable than his life.

Delawar,	Stamford,	Winchester,
North and Grey,	Pembroke,	Bedford,
Kingston,	Lucas,	Manchester,
Lindsey, G. C.	H. London,	Norfolk and
Craven,	Morley and	Marshall,
Northampton,	Mounteagle,	Berkeley, S.
Delamar,		

*Die Jovis, 21<sup>o</sup> Martii, 1688.*

The House having been in consideration of the bill for abrogating the Oaths of allegiance and supremacy, and establishing others in their Place.

A clause for repealing so much of the test-act as concerns the receiving the sacrament, was read.

And the question being put, whether to agree to the said clause?

It was resolved in the negative.

Leave was given by the House to such Lords as will, to enter their dissents, and accordingly these Lords following do enter their dissents, for the reasons following:

1st, Because a hearty union amongst protestants is a greater security to the church and state than any test that can be invented.

2dly, Because this obligation to receive the sacrament is a test on protestants rather than on the papists.

3dly, Because so long as it is continued, there cannot be that hearty and thorough union amongst protestants as has always been wished, and is at this time indispensibly necessary.

4thly,

4thly, Because a greater caution ought not to be required from such as are admitted into offices than from the members of the two Houses of parliament, who are not obliged to receive the sacrament to enable them to sit in either House.

North and Grey, Delamer, Stamford,  
Chesterfield, Grey, P. Wharton.  
J. Lovelace. Vaughan,

*Die Sabbati, 23<sup>o</sup> Martii, 1688.*

*Hodie 3<sup>a</sup> vice lecta est billa,* An act for the abrogating of the oaths of supremacy and allegiance, and appointing other oaths.

A rider (in parchment) providing, that no officer shall incur the penalties of the test-act, in case he shall receive the sacrament in any protestant congregation within a year before or after his admission, was offered and read.

And the question being put, whether this rider shall be made part of the bill?

It was resolved in the negative.

Leave was given to such Lords as will, to enter their dissents, and these Lords do enter their dissents in the reasons following:

1st, Because it gives great part of the protestant free men of England reason to complain of inequality and hard usage, when they are excluded from publick employments by a law, and also, because it deprives the King and kingdom of divers men fit and capable to serve the public in several stations, and that for a mere scruple of conscience, which can by no means render them suspected, much less disaffected, to the government.

2dly, Because his Majesty, as the common and indulgent father of his people, having expressed an earnest desire of liberty for tender consciences to his protestant subjects; and my lords the bishops having, divers of them, on several occasions pro-



essed an inclination, and owned the reasonableness of such a Christian temper; we apprehend, it will raise suspicions in mens minds of something different from the case of religion or the publick, or a design to heal our breaches, when they find, that by confining secular employments to ecclesiastical conformity, those are shut out from civil affairs, whose doctrine and worship may be tolerated by authority of parliament, there being a bill before us, by order of the House, to that purpose; especially when, without this exclusive rigour, the church is secured in all her privileges and preferments, nobody being hereby let into them who is not strictly conformable.

3dly, Because to set marks of distinction and humiliation on any sort of men, who have not rendered themselves justly suspected to the government, as it is at all times to be avoided by the makers of just and equitable laws, so may it be particularly of ill effect to the reformed interest at home and abroad, in this present conjuncture, which stands in need of the united hands and hearts of all protestants, against the open attempts and secret endeavours of a restless party, and a potent neighbour, who is more zealous than Rome itself to plant popery in these kingdoms, and labours, with his utmost force, to settle his tyranny upon the ruins of the reformation all thro' Europe.

4thly, Because it turns the edge of a law (we know not by what fate) upon Protestants and friends to the government, which was intended against Papists, to exclude them from places of trust, as men avowedly dangerous to our religion and government; and thus the taking the sacrament, which was enjoined only as a means to discover Papists, is now made a distinguishing duty amongst Protestants, to weaken the whole by casting off a part of them.

5thly,

5thly, Because mysteries of religion and divine worship are of divine original, and of a nature so wholly distant from the secular affairs of publick society, that they cannot be applied to those ends; and therefore the church, by the law of the gospel, as well as common prudence, ought to take care not to offend either tender consciences within itself, or give offence to those without, by mixing their sacred mysteries with secular interests.

6thly, Because we cannot see how it can consist with the law of God, common equity, or the right of any free-born subject, that any one be punished without a crime: if it be a crime not to take the sacrament according to the usage of the church of England, every one ought to be punished for it, which nobody affirms; if it be no crime, those who are capable, and judged fit for employments by the King, ought to be punished with a law of exclusion, for not doing that which is no crime to forbear: if it be urged still, as an effectual test to discover and keep out Papists, the taking the sacrament in those Protestant congregations, where they are members and known, will be at least as effectual to that purpose.

Oxford, Mordaunt, J. Lovelace,  
R. Montague, P. Wharton, W. Paget.

*Die Veneris, 5<sup>o</sup> Aprilis, 1689.*

The House resumed the debate of the report of the amendments made by the committee in the bill for uniting their Majesties Protestant subjects.

The clause in consideration was concerning a commission to be given out, by the King, of bishops and others of the clergy.

And after some debate it came to this question, *viz.* Whether these words (and laity) shall be added?



Contents 28 } The question being put, the votes  
 Proxies 1 } 29 (with the proxies) were equal;  
 Not. Cont. 27 } then, according to the ancient  
 Proxies 2 } 29 rule in like cases, *semper præ-*  
*sumitur pro negante.*

Leave was given for any Lords to enter dissents; accordingly these Lords following do enter their dissents in the reasons ensuing:

1st, Because the act itself being, as the preamble sets forth, designed for the peace of the state, the putting the clergy into the commission, with a total exclusion of the laity, lays this humiliation on the laity, as if the clergy of the church of England, were alone friends to the peace of the state, and the laity less able, or less concerned to provide for it.

2dly, Because the matters to be considered being barely of human constitution, viz. the liturgy and ceremonies of the church of England, which had their establishment from the King, Lords spiritual and temporal, and Commons assembled in parliament, there can be no reason why the commissioners for altering any thing in that civil constitution should consist only of men of one sort of them, unless it be supposed that human reason is to be quitted in this affair, and the inspiration of spiritual men to be alone depended on.

3dly, Because, though upon Romish principles, the clergymen have a title alone to meddle in matters of religion, yet with us they cannot, where the church is acknowledged and defined to consist of clergy and laity; and so these matters of religion which fall under human determination, being properly the business of the church, belong equally to both; for in what is of divine institution, neither clergy nor laity can make any alteration at all.

4thly, Because the pretending that differences and delays may arise by mixing lay-men with ecclesiasticks,

ecclesiasticks, to the frustrating the design of the commission, is vain and out of doors; unless those that make use of this pretence suppose the clergy part of the church, have distinct interests or designs from the lay-part of the same church; and this will be a reason, if good, why one or other of them should quit the House for fear of obstructing the business of it.

5thly, Because the commission being intended for the satisfaction of dissenters, it would be convenient that lay-men of different ranks, nay perhaps of different opinions too, should be mixed in it, the better to find expedients for that end, rather than clergymen alone of our church, who are generally observed to have very much the same way of reasoning and thinking.

6thly, Because it is the most ready way to facilitate the passing alterations into a law, that lay-lords and commons should be joined in the commission, who may be able to satisfy both Houses of the reasons upon which they were made, and thereby remove all fears and jealousies ill men may raise against the clergy, of their endeavouring to keep up, without grounds, a distinct interest from that of the laity, whom they so carefully exclude from being joined with them in consultations of common concernment, that they will not have those have any part in the deliberation, who must have the greatest in determining.

7thly, Because such a restrained commission lies liable to this great objection, that it might be made use of to elude repeated promises, and the present general expectation of compliance with tender consciences, when the providing for it is taken out of the ordinary course of parliament, to be put into the hands of those alone who were latest in admitting any need of it, and who may be thought the more unfit to be the sole composers



of our differences, when they are looked upon by some as parties.

Lastly, Because, after all, this carries a dangerous supposition with it, as if the laity were not a part of the church, nor had any power to meddle in matters of religion; a supposition directly opposite to the constitution both of church and state, which will make all alterations utterly impossible, unless the clergy alone be allowed to have power to make laws in matters of religion, since what is established by law cannot be taken away or changed, but by consent of laymen in parliament, the clergy themselves having no authority to meddle in this very case, in which the laity are excluded by this vote, but what they derive from lay hands.

Winchester, Mordaunt, J. Lovelace.

I dissent for this and other reasons :

Because it is contrary to three statutes made in the reign of Henry VIII, and one in Edward VI, which impowers thirty-two commissioners to alter the canon and ecclesiastical laws, &c. whereof sixteen to be of the laity and sixteen of the clergy.

Stamford.

*Die Sabbati, 20<sup>o</sup> Aprilis, 1689.*

Reasons offered by the Commons at a conference, why they could not agree to some of the amendments made by the Lords to the bill for abrogating the oaths of allegiance and supremacy, having been reported,

Contents 32 The question was put, whether to  
Not Cont. 36 agree with the House of Commons?

It was resolved in the negative.

Leave was given to such Lords as would to enter their dissents; and accordingly these Lords following

following do enter their dissents in these reasons ensuing:

The bishops and clergy not to be excused from taking the oaths of allegiance.

1st, Because by the same reason that any part of the subjects may be excused from giving assurance of their allegiance and fidelity to the government, all may, and the government will be left perfectly precarious.

2dly, Because the clergy, and especially the bishops, receiving their benefices, dignities, and preferments from the publick, ought to be the first and forwardest, by their doctrine and example, to teach others their obligations to be zealous in preserving the government, as well as religion established by law.

3dly, Because the pretence of scruple and tenderness of conscience can have no other foundation in the present case, but the supposition of some former obligation, no one ever scrupling to give all manner of pledges of his allegiance, where he thought it due; those therefore that scruple ought the more to be pressed, and the sooner brought to the test, unless any one can think it reasonable the government should favour, encourage and indulge those that will not give the usual security that they are not enemies to it.

4thly, Because, however, the King may, that part of the people who have sworn allegiance to him cannot have reason to be satisfied, when they see another part of the nation under looser obligations to the government than they; nothing being so apt to raise fears, jealousies and disorders in a state, as unnecessary distinctions, or any cause of suspicion of want of unanimity or fidelity among themselves in the great concerns of the kingdom, especially in the titles of the crown, and at such time as this, when we are entering into war



with a potent enemy, who openly owns and supports a contrary title.

5thly, Because it will discourage our allies, and give them a lower opinion of our King's interest in his people or authority over them, than is for the advantage of this kingdom in particular, or the Protestant religion through Europe, when they shall understand, that those that are looked on to be directors of other mens consciences, cannot bring their own to acknowledge him in this first and fundamental act of obedience; and what must they conclude, when they hear that the parliament hath dispensed with such an exemplary part of the nation in a business of such moment?

6thly, Because it may be of ill consequence, if the parliament should set any thing like a mark of disaffection to the government on that sacred order, by allowing them now a dispensation from taking a very moderate oath of allegiance, who, in a late reign, were too forward and zealous by addresses, preaching and promoting new oaths, to carry loyalty and obedience to monarchy to a pitch unknown to our ancient laws or former ages.

7thly, Because there being no other assurance of any one owning himself a subject to any government, but either acting under or swearing to it, it is very necessary that those who forbear to act should, of all others, be most strictly required to take the oaths, that the publick might have that security of their allegiance, from those that refuse the others.

8thly, Because it is unreasonable that, for a part of the clergy, the whole laity and clergy should be exposed to the inconvenience of want of justice, and the dangers of disorders for want of settling the Militia; the renewing of all commissions being delayed, to the great prejudice of the government and the people, till this act be passed:

and

and therefore we do not see why this House should not comply with the Commons in the present necessity, tho' their vote be hard on a part of the subjects; whereas the utmost that can be pretended in this case is only contending for an extraordinary favour, and an unheard of allowance to some scrupulous men.

9thly, Because it is what neither history can parallel, nor any policy justify, to allow any part of the people who claim protection from the government, to be excused from giving the common and necessary assurances of allegiance and fidelity to it; and it is hard to think, how any one that intends to be faithful to it, should come so near renouncing the government, as to desire to be dispensed with from being under the same ties with others, their fellow-subjects, not to do so.

Macclesfield, Monmouth.

*Die Sabbati, 25<sup>o</sup> Maii, 1689.*

A printed paper was brought into the House which was dispersed abroad; Titus Oates being called in, was asked by the speaker, Whether he did own this paper? And he answered, he did own this paper.

And the same being read, the question  
 Contents 29 was put, whether the said paper doth  
 Not Cont. 18 contain matter tending to the breach  
 of the privilege of this House?

It was resolved in the affirmative.

Leave was given to such Lords as would to enter their dissents; and accordingly these Lords following do enter their dissents in these reasons ensuing:

1st, For that the matter resolved to be a breach of the privilege of this House, is not plainly and distinctly expressed in the said vote, as we humbly conceive it ought to be; nor doth it appear there-  
 in



in what particular privilege of this House is broken by any matter contained in the said paper; and therefore this vote can be of no use to support any privileges of this House, or prevent the breach of any of them for the future.

2dly, Because the said vote may tend to the dissolution of both Houses, which, we humbly conceive, may prove of dangerous consequence to the King and kingdom; we apprehending the whole drift of the said paper to be in order to have relief in a legislative way; and accordingly the case and prayer is directed to both Houses.

3dly, Because this day being appointed, by order of the House, to have the opinion of the judges on the writ of error in the case of the said Titus Oates, and the said judges attending accordingly, we did think it proper that this honourable House would have heard their opinion in the said case; and thereupon have (according to the usual course of other courts of judicature in such cases) proceeded to sentence before the taking into consideration the said paper, introduced but this morning into the House.

Bolton, Macclesfield, Stamford,  
Cornwallis, P. Wharton, Sydney.

*Die Veneris, 31<sup>o</sup> Maii, 1689.*

The Lords having heard the opinion of all the judges concerning the illegality of the two judgments against Titus Oates upon the point of perjury, for which he hath brought his writs of error into this House to have them reversed.

Contents 23 The question was put, whether to re-  
Not Cont. 35 verse the said two judgments?  
It was resolved in the negative.

Leave was given to such Lords as will to enter their dissents; and accordingly these Lords following do enter their dissents in these reasons following: 1st,

1st, For that the King's-Bench, being a temporal court, made it part of the judgment that Titus Oates, being a clerk, should, for his said perjuries, be divested of his canonical and priestly habit, and to continue divested all his life; which is a matter wholly out of their power, belonging to the ecclesiastical courts only.

2dly, For that the said judgments are barbarous, inhuman and unchristian; and there is no precedent to warrant the punishments of whipping and committing to prison for life, for the crime of perjury; which yet were but part of the punishments inflicted upon him.

3dly, For that the particular matters, upon which the indictments were found, were the points objected against Mr. Titus Oates's testimony, in several of the trials, in which he was allowed to be a good and credible witness, though testified against him by most of the same persons who witnessed against him upon these indictments.

4thly, For that this will be an encouragement and allowance for giving the like cruel, barbarous and illegal judgments hereafter, unless this judgment be reversed.

5thly, Because Sir John Holt, Sir Henry Pollexfen, the two chief justices, and Sir Robert Atkins, the chief baron, with six judges more, (being all that were then present) for these and many other reasons, did, before us, solemnly deliver their opinions, and unanimously declare that the said judgments were contrary to law and ancient practice; and therefore erroneous, and ought to be reversed.

6thly, Because it is contrary to the declaration, on the 12th of February last, which was ordered by the Lords spiritual and temporal and Commons then assembled, and by their declaration ingrossed in parchment, and inrolled among the records of parliament, and recorded in Chancery, whereby it,  
doth



doth appear, that excessive bail ought not to be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted.

Bolton,	Macclesfield,	Stamford,
Oxford,	Bathe,	Newport,
Grey,	Cornwallis,	R. Eure,
P. Wharton,	J. Bridgewater,	Bolingbroke.
Herbert,	Vaughan,	

*Die Martis, 25<sup>o</sup> Junii, 1689.*

The House having heard the opinion of all the judges in the case of Sir Samuel Barnardiston, upon his writ of error depending in this House.

And the question being put, whether to go on in the debate of this business now?

It was resolved in the affirmative.

After debate, the question was put, whether to reverse the reversal of the judgment given between Sir Samuel Barnardiston and Sir William Soams?

It was resolved in the negative.

Leave is given to several Lords to enter their dissents to the abovesaid question, and accordingly do enter their dissents in the reasons following:

1<sup>st</sup>, Because, it is a denying Sir Samuel Barnardiston the benefit of law, which gives relief in all wrong and injury; and though this be an action of the first impression, yet here being a damage to the plaintiff, the common law gives him this action to repair himself; and were it not so, there would be a failure of justice, which cannot be admitted.

2<sup>dly</sup>, Because the allowing this reversal tends towards the giving power and encouragement to the sheriffs to make false and double returns, by which means the right of elections will be avoided, and it tends thereby to the packing of a House of Commons, which may overturn the whole frame  
of

of the government, and establish what religion and government a packed parliament shall think fit.

Bolton, Stamford, Herbert.  
P. Wharton, Macclesfield,

*Die Veneris, 12<sup>o</sup> Julii, 1689.*

The lord president reported, from the sub-committee, the bill entitled, An act for reversing two judgments given in the court of King's-Bench against Titus Oates, clerk, wherein they have made several amendments, and added a proviso drawn by the judges; which amendments and proviso were read, and then read one after the other as follows:

Third press 29 line, after the word (erroneous) read (unprecedented and so) and after (illegal, and are of ill example to future ages) read (that the practice thereof ought to be prevented for the time to come.)

Contents	31	}	40	The question was put, whether to agree to this amendment?
Proxies	9			
Not Cont.	27	}	32	It was resolved in the affirmative.
Proxies	5			

Thirty-fourth line, after (King's-Bench) leave out these words (and the judgments given on the said writs of error.)

The question was put, whether to agree to this amendment?

It was resolved in the affirmative.

Thirty-seventh line, after the word (judgments) add (in the court of King's-Bench.)

The question was put, whether to agree to this amendment?

It was resolved in the affirmative.

Thirty-seventh line, after the word (defaced) leave out (any thing to the contrary thereof in any wise notwithstanding) and read (and it is hereby further enacted, by the authority aforesaid, that it shall



shall not be lawful at any time hereafter to inflict the like excessive punishments again on any person whatsoever.)

The question was put, whether to agree to this amendment?

It was resolved in the affirmative.

Then the following proviso was read.

Provided always, and be it hereby enacted and declared, by the authority aforesaid, that until the said matters, for which the said Titus Oates was convicted as aforesaid for perjury, be heard and determined in parliament, that the said Titus Oates shall not be received in any court, matter or cause whatsoever, to be a witness or give any evidence; any thing in this act in any wise contained to the contrary notwithstanding.

The question was put, whether to agree to this proviso?

It was resolved in the affirmative.

Leave was given to any Lords to enter their dissents, and these Lords following do enter their dissents to the several foregoing questions for these reasons:

To the first.

Because we are of opinion, that the judgments given in the court of King's-Bench against Titus Oates are altogether illegal and cruel, and not capable of being qualified in justice or law, by the words (unprecedented and so cruel and illegal, that the practice thereof ought to be prevented for the time to come) but ought plainly to be declared positively against law, justice, and the undoubted right of the subject.

To the second.

Because we are of opinion, that no merit or demerit of any person appealing to the House of Lords, or bringing thither a writ of error, ought to have any weight with the Lords in giving judgment;

ment; and therefore no reason why the said judgments ought not to be reversed by the legislative power, since the supreme court of judicature (the Lords in parliament) is the utmost resort any person can have for justice, except the legislative power.

To the third.

Because we are of opinion, that barely saying (it shall not be lawful at any time hereafter to inflict the like excessive punishments again) is not strong enough to deter a corrupt or partial judge from practising the same, because it's without a penalty upon such judge; and barely the transgression of law, not made penal, can amount to no more for punishment than a moderate fine; and there is no doubt but all judges will be hereafter cautious of setting great fines, since of late the subject, in that point, has been grievously oppressed, as does appear by several exorbitant fines annulled in this present parliament.

We also enter our dissent to the proviso for these reasons :

1st, Because no man ought, by the laws of England, to be punished unheard; though the parliament has power in all things possible in its legislative capacity, yet by all rules of law and justice, no man ought to be oppressed merely arbitrarily; and in this case it seems to us to be so, for the other part of the bill reverses two illegal and unjust judgments against Titus Oates in the King's-Bench, affirmed upon writs of error brought to reverse the same; and this proviso, without hearing him in his defence, enacts Titus Oates to be a man incapable of being a witness, which, we conceive, is more infamy than being a slave.

2dly, The proviso, as it is penned, that it may have a shew of justice, seems to give him the said Titus Oates a liberty to clear himself, but in reality



ality it is impossible for him so to do; for if it be meant, that the matter for which the said Titus Oates was convicted of perjury, must be heard and determined in parliament in a legislative way, there is no need of this proviso; but if it be meant, that the said matters for which he was convicted of perjury must be heard and determined by the House of Lords in parliament, then (besides that it may seem to cast a reflection upon the proceeding of the House of Lords, in affirming the judgments given in the King's-Bench against him, without hearing him) there will be two insuperable difficulties; one is, that by the rules and practice of the House of Lords, as a court of judicature, the Lords cannot call for the matters and evidence concerning the two verdicts, nor can Titus Oates bring that before the Lords in judicature; the other is, in case the Lords in judicature shall call for the same, or Titus Oates should bring them before the Lords in judicature, and the Lords proceed thereon to give judgment, it is by us conceived, that it would be an original cause, and therefore not to be proceeded upon.

3dly, If Titus Oates cannot acquit himself of perjury, as this proviso seems to give him liberty to do in the House of Lords, he can never bring it into any inferior court.

4thly, Last of all, we conceive, that the refusing to condemn the verdicts brought against Titus Oates in the King's-Bench does condemn, at the same time, the credit of the Popish plot, which was affirmed by so many witnesses in several parliaments, and caused so many addresses to the King concerning it, since the first discovery of it was upon this very evidence, for which he was convicted (though by a packed corrupt jury) by the highest oppression, and by a former jury in the same case acquitted of perjury.

Bedford,

Bedford,	Vaughan,	Newport,
Charles de Berkeley,	Montague,	Stamford,
Maclesfield,	Suffex,	Suffolke.
Paget,	Cornwallis,	

Against the amendment.

Line the 34th, after (the King's-Bench) leave out  
(and the judgments on the said writs of error)  
37th line, after the word (judgment) add (in  
the court of King's-Bench.)

Because it is altogether unintelligible to us, how we can reverse the judgments in the King's-Bench as erroneous and illegal, and yet so induttriously pass by the judgments given in this House, that affirm those illegal and erroneous judgments, by rejecting that clause in the bill brought up from the House of Commons that reverses that judgment also.

Against the proviso.

Because the title and intention of the bill is to reverse the judgments against Titus Oates, but this proviso makes it firmer and heavier than ever, as much as an act of parliament is of more weight than the sentence of any judicial court, and the infamy of perjury a greater punishment than any thing barely corporal.

Because, we think, we cannot justify to the world, or our own consciences, such a compliance for the judgments of profligate wretches, set up for judges in Westminster-Hall, as that in the same act, wherein we are forced (upon undeniable reasons, manifest to the whole world) to annul their judgments as illegal and erroneous, we should yet retain and fix upon him, who hath already suffered by it, undue and unheard-of punishments, the severest part of a confessed illegal sentence.

Because we cannot consent that this House, which hath been always looked on as the seat of  
K justice



justice and honour, should come under the obloquy of a place, where men are condemned first, and tried afterwards, which we cannot see how to avoid, if according to this proviso, we lay Dr. Oates presently under the condemnation of perjury, until the matters of that perjury shall be heard and determined hereafter.

Because, supposing him guilty, we being, by no forms of justice, obliged to condemn him, we think it prudence not to give an occasion to be thought apprehensive of his testimony, by taking this new and unheard-of way of depriving him of it.

The case of any man living, the condemnation of perjury ought not to be laid on Titus Oates, before a fair and full hearing, for that it was so much the labour of the enemies of our religion and liberties (who in this matter knew well what they did) to advance their designs by invalidating his testimony, the credit of which was in vain attempted by solemn trial, 'till the irregularities of the last reign, and the way to corrupt judges and juries to that purpose; we therefore fear, we may be accused of out-doing the whipping precedents of Westminster-Hall, in consenting to condemn without hearing or trial.

Because we cannot consent, that this hardship be put on his Majesty, either to reject a bill offered to him by both Houses, which hitherto he hath not done, or else, in a most solemn way, to lay a man under the condemnation of the most detestable crime, without any knowledge of it; an injustice no-body can advise him to, to advance his own interest, much less for the promoting that of his enemies, who always did and do think themselves concerned to discredit the opinion of the Popish plot, to which this seems to have a great tendency.

Because

Because we cannot consent to fix on any one the condemnation of perjury, by act of parliament, upon bare surmise before a hearing, were it for no other reason but that those who have proofs may, by an orderly course of law, convict him; to condemn Oates of perjury, until it shall be heard and determined in parliament, is to condemn him for ever and unheard; for how after this can it come judicially before us, there lies no indictment in the House of Lords, nor writ of error, when the record is vacated; so that it is utterly impossible for Titus Oates to receive any benefit by a remedy seemingly provided for him by act of parliament.

Montague, Monmouth, Oxford,  
Suffolke, Maclesfield, Herbert.

*Die Martis, 30<sup>o</sup> Julii, 1689.*

The earl of Rochester, and the other Lords, who were managers of the free conference had yesterday with the House of Commons, concerning the amendments made by their Lordships to the bill, intituled, An act for reversing two judgments given in the court of King's-Bench against Titus Oates, clerk, made report thereof, and of several things urged by the Commons, and replies thereunto.

After a full debate and consideration had thereof,

The question was put, whether to adhere to the amendments made by this House in the bill, intituled, An act for reversing two judgments given in the court of King's-Bench, against Titus Oates, Clerk?

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It was resolved in the affirmative.



These Lords following do enter their dissents to the abovesaid question in the reasons ensuing:

1st, Because the persons who gave evidence against Titus Oates were incompetent witnesses.

2dly, Because Titus Oates's evidence had before been verified upon those very points in which the perjury is assigned.

3dly, Because it was at a time when neither council nor witnesses could, with safety, appear for Titus Oates.

4thly, Because it was at a time when the whole course of the administration of the government was corrupted.

5thly, Because a vast sum of money, on that trial, and other foul practices, were used both with the witnesses and jurors.

6thly, Because it makes it almost impossible to prove that a verdict is corrupt, if nothing but the giving and taking of money may pass for evidence; whereas the law has declared, that many other things may make a verdict corrupt.

7thly, Because this gives the jury preference in point of justice above four successive parliaments.

8thly, Because it casts an imputation on the verity of the Popish plot, and on the justice of the nation, and justifies my lord Stafford, and the rest that suffered on the score of the plot, so long as the judgment against Oates stands in force.

9thly, Because it is expressly against the declaration of our rights on the 13th of February last.

10thly, Because it is the greatest blow that ever the English liberties received, and puts them under a greater disadvantage than if they had not so lately been declared.

11thly, Though a bill should be brought in to declare the like judgment shall not be given in time to come, yet it would imply, that before such judgment was lawful; which may be of pernicious consequence.

12thly,

12thly, Because this judgment against Oates has so far been received for law, since Oates suffered, that whipping has been used in other cases besides perjury.

13thly, Because the Lords have allowed the judgment against Titus Oates to be erroneous.

14thly, Because it is more consistent with the honour and justice of the House of Peers to rectify a mistaken judgment, given by themselves, than to adhere to it.

15thly, Because, at Oates's trial, the court refused to grant a *habeas corpus* for his witnesses that were in prison, though often by him demanded, and no notice taken of his demand even by the jurors themselves.

Bolton,	Montague,	Rivers,
Herbert,	Paget,	Vaughan,
Monmouth,	Shrewsbury,	J. Lovelace,
Bolingbroke,	Ward,	Bathe,
Radnor,	Delamer,	Culpeper,
Stamford,	Newport,	Maclesfield,
Granville,	Cornwallis,	Oxford.

*Die Martis, 19<sup>o</sup> Novembris, 1689.*

*Hodie 3<sup>a</sup> vice lecta est billa,* An act for disabling minors to marry without the consent of their fathers or guardians, and against their untimely marrying after the decease of their fathers, and for preventing all clandestine marriages for the future.

The question being put, whether this bill shall pass?

It was resolved in the affirmative.

Memorandum, That these Lords following, before the putting of the abovesaid question, desired leave to enter their dissents, if the question was carried in the affirmative, and accordingly their Lordships do enter their dissents as follow:



Though we approved of the design of the bill, yet we enter our dissent, because we believe marriage to be so sacred an ordinance of God, that after it is religiously contracted and consummated, it cannot be nulled.

Carnarvon, P. Winchester, Tho. Meneven',  
Dartmouth, Abingdon, H. London,  
W. Landaffe, Maynard, Gilb. Bristol.

*Die Sabbati, 23<sup>o</sup> Novembris, 1689.*

*Hodie 3<sup>a</sup> vice lecta est billa*, An act declaring the rights and liberties of the subject, and settling the succession of the crown.

A rider was offered to be added (that all pardons upon an impeachment of the House of Commons are hereby declared to be null and void, except it be with the consent of both Houses of Parliament.)

After long debate, this question was  
Contents 17 put, whether this rider shall be  
Not Cont. 50 made part of the bill?

It was resolved in the negative.

Memorandum, That before the putting the aforesaid question, the Lords following desired leave to enter their dissents, if it were carried in the negative, and accordingly do enter their dissents in these reasons following:

1st, Because to impeach being the undoubted right of the Commons of England, and by which alone justice can be had against offenders that are too big for the ordinary courts of justice, impeachments would be rendered altogether ineffectual, if the King can pardon in such cases.

2dly, Because such a power of pardoning would cause a failure of justice, which the law of England will not allow of in any case.

3dly, Because the government becomes precarious, when there is wanting a sufficient power to punish

punish evil ministers of state, the bringing of such ministers to justice being then a matter of grace, and not of right.

4thly, Because such evil ministers are in a much securer condition than any other offenders, it being the interest of ill-disposed Kings to protect them from justice, since they are so much the more useful and necessary to such Kings, by how much they have been instrumental in subverting the government.

5thly, Because the King can only pardon such offences as are against himself, but not in case of an appeal, nor where-ever the wrong or injury is to a third person.

6thly, *A fortiori*, the King cannot pardon an impeachment, because all the Commons of England have an interest in it, and it is at their suit.

7thly, Because it is inconsistent with the government of England to vest a power any where, that may obstruct the public justice.

8thly, Because such a power of pardoning sets the King's prerogative above the government, which is inconsistent with the reason and nature of this constitution.

9thly, Because the rejecting of the rider, and the vote of this House against the dispensing power in general, don't seem to be very consistent, since the power of pardoning upon impeachments is altogether as great as that of a dispensing power.

Maclesfield,	Cornwallis,	Herbert,
Offulston,	Bathe,	Stamford,
Bolton,	J. Lovelace,	Granville,
Delamar,	R. Montague,	Crewe,

*Die Martis, 14<sup>o</sup> Januarii, 1689.*

Upon consideration of the report from the committee of privileges, the tenth instant, concerning the trial of peers :



The question was put, That it is the  
 Contents 38 ancient right of the Peers of England  
 Not Cont. 20 to be tried only in full parliament  
 for any capital offences?

It was resolved in the affirmative.

Memorandum, That the Lords following, before the putting the abovesaid question, desired leave to enter their dissents, if the question was carried in the affirmative, and accordingly they do enter their dissents as follow :

1st, Because the statute of 15 Edw. III. which first enabled the trial of Peers to be only in parliament, is repealed by the statute of 17 Edw. III. as contrary to the laws and usage of the realm, as well as the rights and prerogatives of the crown.

2dly, As the statutes of 17 Edw. III. has declared the law and usage of the realm before the statute of 15 Edw. III. so the practice has been accordingly ever since, insomuch that from that day to this, no Peer indicted for a capital offence has ever claimed a privilege of being tried only in parliament; and tho' very many Peers have been tried and attainted out of parliament, yet no writ of error to reverse such attainder for that reason has ever been demanded.

3dly, Because the consequence of this assertion would be, that the heirs of all such as ever were attainted out of parliament might claim to be Peers of this realm, the attainder of their ancestors being void, because the sentence against them was given by a court that had no jurisdiction; and also for the same reason, all acquittals of any Peers would be void too, and the Peers may be brought again into jeopardy of their lives.

4thly, The frequent attempts to obtain an act of parliament to enact, That no Peer shall be tried out of parliament for capital offences, is an evidence, that, without such a law, a Peer may be  
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tried out of parliament, and no vote of either House of parliament can change the law.

5thly, Because this vote takes from the subject the right of an appeal of felony, in which a Peer ought to be tried by a jury of Commoners, and not by his Peers.

6thly, Because it deprives the Peers of the benefit of the *habeas corpus* act, for if a Peer cannot be tried for a capital offence but only in parliament, and may be committed to prison for such offence, he must of necessity remain there till the next parliament, contrary to the said act, which no resolution of the House of Peers can or ought to alter at the price of their liberty.

7thly, This vote, That the Peers must be tried only in full parliament, seems to imply, that the Commons are necessary parties to the trial of a Peer, which is contrary to *magna charta*, and the known laws of this realm.

Nottingham, Sidney, Cornwallis.

*Die Jovis, 23<sup>o</sup> Januarii, 1689.*

The House was put into a committee to consider of the bill, intituled, An act to restore corporations to their ancient rights and privileges.

The House was resumed, and the earl of Mulgrave reported, That the committee of the whole House have been upon the first enacting clause in the bill; and it is the opinion of the committee, that the words [declared, and were and are illegal] should not stand in the bill.

Contents 38 {

Proxies 13 {

Not Cont. 39 {

Proxies 4 {

Then this question was put, whether to agree with the committee in leaving out those words?

It was resolved in the affirmative.

Memorandum, That the Lords following, before the putting of the abovesaid question, desired leave to enter their dissents, if the question was carried



carried in the affirmative, and accordingly they do enter their dissents as follow :

1st, That there hath been only two cases cited, in all the law books, towards the maintaining the surrender of corporations, *viz.* Dyer 273, 282. The opinions in these cases are not upon argument; the first of them, as appears by the book, needed, and had, an act of parliament to confirm it, being denied to be law, in my lord Coke's 3d report, in the dean and chapter of Norwich's case, 44 Eliz. The other of them denied to be law by the judges of the King's-Bench in Fulcher and Heywood's case in 2 Charles I. in Palmer's reports; and by the express authority of that case, and the express resolution of the judges in that case, a corporation cannot, by surrender, dissolve itself.

2dly, Because that Beda, in the time of Hen.V. and the corporation of Newbury, did surrender to that King, which was not allowed, but the House of Commons called upon them to send up members, notwithstanding the said surrender; and until they petitioned the said House, setting forth their inability of supporting that charge, they were not excused; but the House allowed their petition, and they have sent none since.

3dly, The surrenders in debate being for the intent and purpose of returning such parliament men whom the King should appoint, was for the subversion of the laws and liberties of England, and introducing of popery and arbitrary government; and that the putting out these words seems to be the justifying of the most horrid action that King James was guilty of during his reign; and, we humbly conceive, a denying the chiefest grievance mentioned in King William's declaration when he was prince, and the greatest inducement for the people's taking up arms in defence of their liberties

ties and properties, and protestant religion, and the establishing this King upon the throne.

Bolton,	Bedford,	Vaughan,
Herbert,	Ashburnham,	Stamford,
Maclesfield,	Mountague,	Sidney.

*Die Sabbati, 5<sup>o</sup> Aprilis, 1690.*

Report was made from the committee of the whole House upon the bill declaring the acts in the last parliament of full force, and for recognizing their Majesties to be King and Queen, That the committee had sat on the first enacting clause in the bill, and have made these amendments therein, *viz.* in the 2d sheet in the 1st line, after (declared) they have added (adjudged) and in the 12th line they have left out the word (adjudged) and they desire the concurrence of the House therein.

Then the question was put, whether  
 Contents 30 this House agrees with the com-  
 Not Cont. 36 mittee in this report?

It was resolved in the negative.

Leave having been given to any Lords to enter their dissents, if the question was carried in the negative, we whose names are hereafter written do enter our dissents for these reasons following:

1st, Because there appears to us no reason to doubt of the validity of the last parliament, the great objection insisted upon being the want of writs of summons, which we take to be fully answered by the state the nation was in at that time, which made that form impossible, such exigencies of affairs having been always looked upon by our ancestors (however careful of parliamentary forms) to be a sufficient reason to allow the authority of parliament, notwithstanding the same, or other defects in point of form; as the parliament which set Henry I. and King Stephen on the throne; the parliament held 28 Edward I. the parliament summoned



moned by the prince of Wales 20 Edward II. the parliament summoned 23 Richard II. the parliament held 1 Henry VI. and the parliament held 28 Henry VI. the acts of which parliaments have been held for law.

2dly, Because the rejecting this clause must necessarily disturb the minds of the greatest part of the kingdom, for if those be not good laws, all commissioners, assessors, collectors and receivers of the late taxes are not only subject to private actions, but to be criminally prosecuted for one of the highest offences against the constitution of the English government, *viz.* the levying money on the subject without lawful authority; all persons who have lent money, upon the credit of those laws, will be in dread of their security, and impatient to get in their money; all persons concerned in levying the present taxes will be fearful to proceed; all persons who have accepted any offices or employments ecclesiastical, civil or military, will be under the apprehension of having incurred all the terrible forfeitures and disabilities of the act of 25 Charles II. cap. 2. and all who have any way concurred to the condemnation or execution of any person upon any act of the late parliament, will think themselves in danger of being called to an account for murder.

3dly, Because to leave a doubt touching the validity of the last parliament, is to shake all the judgments and decrees given in the House of Peers, or in Westminster-Hall, during this reign; and to bring a question upon the whole course of judicial proceedings.

4thly, Because if the authority of the last parliament be not put out of the question, the authority of the present parliament can never be defended, for the statute of 5 Eliz. cap. 1. makes the election of every member of the House of Commons

Commons absolutely void, if he enter into the House without taking the oath of supremacy, which no one person having done, there is an end of this House of Commons: and by the statute made 30 Car. II. if any peer or member of the House of Commons presume to sit and vote without first taking the oaths of allegiance and supremacy, before the speaker of the respective Houses, he does not only forfeit five hundred pounds, and become as a popish recusant, and disabled to take a legacy, to hold any office or place of trust, to prosecute any suit, to be a guardian, executor or administrator, but is made for ever incapable to sit and vote in either House of parliament; and consequently this can be no parliament, nor any who have sat in either House be capable of sitting in parliament hereafter.

5thly, Because to leave room to doubt of the authority of the last parliament, is to shake the succession of the crown established by it, and the credit and authority of all treaties made with foreign princes and states by King William, as the undoubted King of these realms; so that if the last was no parliament, and their acts no laws, this is our case: the nation is engaged in a war without the consent of parliament, the old oaths of supremacy and allegiance remain in force, and the nation forced, under colour of law, to swear fidelity to King William, though they can never act as a lawful parliament without taking the oaths of allegiance to King James: all judgments and decrees in the House of Lords, during the late parliament, are of no force; great sums of money have been levied, without consent of parliament, and men have been put to death, not only without but against law, which is the worst sort of murder: lastly, the King upon the throne, the peerage of England, and the Commons freely elected by the people,



people, have been parties to all this: the Peers and Commons now assembled are under a perpetual disability, and the nation is involved in endless doubts and confusions, without any legal settlement or possibility to arrive at it, unless a parliament be summoned by King James's writ, and the oaths of allegiance taken to him.

Boulton, Bedford, Monmouth,  
 Maclesfield, Herbert, Delamer,  
 Stamford, Suffolke, Oxford.  
 Newport,

*Die Martis, 8<sup>o</sup> Aprilis, 1690.*

*Hodie 3<sup>a</sup> vice lecta est billa,* An act for recognizing the King and Queen, and for avoiding all questions touching the acts made in the parliament assembled at Westminster the 13th day of February, 1688.

The question was put, whether this bill shall pass?

It was resolved in the affirmative.

Before the question was put, several Lords desired leave to enter their dissents, if the question was carried in the affirmative.

Dissentient'

1st, Because, we conceive, that saying (it is enacted by the authority of this present parliament, that all and singular the acts made in the last parliament were laws) is neither good English nor good sense.

2dly, If it were good sense to enact for the time past, it must be understood, on this subject, to be the declaring of laws to be good which were passed in a parliament not called by writ in due form of law, which is destructive of the legal constitution of this monarchy, and may be of evil and pernicious consequence to our present government under this King and Queen.

Somerſet,

Somerſet,	Huntingdon,	Scarſdale,
Rochefter,	Abingdon,	Weymouth,
J. Jermyn,	Tho. Menev',	Dartmouth,
Westmoreland,	Feverſham,	Nottingham,
H. London,	P. Wincheſter,	Wigorn'.
W. Landaffe,	W. Afaph,	

The foregoing reaſons were ordered to be expunged, but the above may be depended upon as a genuine copy.

*Die Jovis, 10<sup>o</sup> Aprilis, 1690.*

The reaſons in the proteſtation made the 8th inſtant againſt ſome words in the bill for recognizing King William and Queen Mary being read, were, upon the queſtion, ſeverally ordered to be expunged out of the journal.

Leave having been aſked and given for entering diſſents, if the queſtions were carried in the affirmative :

Diſſentient'

Whereas the queſtions for expunging the reaſons of our proteſtation, April the 8th, were carried in the affirmative ; and whereas theſe reaſons were only againſt ſome words in one clauſe in the bill, intituled, An act for recognizing King William and Queen Mary, and for avoiding all queſtions touching the acts made in the parliament aſſembled at Weſtminſter the 13th day of February, 1688, which enacted, that the acts of the late parliament were laws and ſtatutes of this realm :

And leave being given to enter our diſſents to thoſe reaſons, we do ſo accordingly for theſe reaſons :

1ſt, Becauſe it is the privilege of the Peers to enter their diſſent, and it has been the ancient practice to enter alſo the reaſons of ſuch diſſent, of which the Lords, that ſo proteſt, are the moſt proper



proper judges, as well knowing what arguments persuaded them to be of that opinion; and no reasons can be more proper than such as they conceive are founded upon matter of fact and the law of the land.

2dly, Because there is no precedent of expunging the reasons of any protestation.

3dly, Because the protestation was not against the whole bill, but some particular words of it; but by expunging the reasons of that protestation, it appears that we have protested against the whole bill, which is contrary to our sense and intentions.

Nottingham,	Ed. Wigorn',	Chandos;
J. Jermyyn,	P. Winchester,	Abingdon,
H. London,	Hum. Bangor,	W. Afaph.
Tho. Menev',	Westmoreland,	

*Die Martis, 13<sup>o</sup> Maii, 1690.*

Report was made from the committee of the whole House, upon the bill for reversing the judgment in a *quo warranto* against the city of London, and for restoring the city to its ancient rights and privileges, That the committee had thought fit (upon the council desiring it) to allow further time for the said city to be heard by their council.

Contents	42	} 33	And after debate, the question was put, whether to agree with the committee in allowing them longer time?
Proxies	2		
Not Cont.	40	} 47	
Proxies	7		

It was resolved in the negative.

Leave having been given to any Lords to dissent, if the question was carried in the negative, we whose names are hereafter written do protest to the said question in the reasons following:

1st, Because it seems very hard, that a further time of preparation should not be allowed in a case of the highest importance, to which the city, by their whole representative body, had desired to

to be heard, especially several Lords having informed the House on their behalf, that the time granted them was not sufficient to instruct their council, who, at the bar, did also desire a further day to be able to speak to such important points, declaring themselves not sufficiently prepared, having their instructions but late the night before.

2dly, Because of how much greater moment any thing is, so much the greater deliberation and advice ought to be had upon it; and this is of such high importance, that it not only concerns the city of London, but all the corporations in England, that are by prescription, and, in consequence, the legislative of this government.

Cornwallis,	Bolton,	Stamford,
Maclesfield,	Bedford,	Vaughan,
J. Bridgewater,	Clare,	Warrington,
Monmouth,	Carteret,	Ossulstone,
Bathe,	Herbert,	R. Eure,
Manchester,	P. Wharton,	Oxford,
Devonshire,	Newport,	Dorset,
Clifford,	Montague,	Granville.
J. Lovelace,	R. Sydney,	

*Die Jovis, 30<sup>o</sup> Octobris, 1690.*

*Hodie 3<sup>a</sup> vice lecta est billa,* An act concerning the commissioners of the admiralty.

Contents 25 The question being put, whether this  
Not Cont. 17 bill shall pass into a law?

It was resolved in the affirmative.

Leave having been given to any Lords to enter their dissents, if the question was carried in the affirmative, these Lords following do enter their dissents in these reasons:

1<sup>st</sup>, Because this bill gives a power to commissioners of the admiralty to execute a jurisdiction, which by the act of Car. II. intituled, An act for establishing articles and orders for the regulating

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and



and better government of his Majesty's navy ships of war and forces by sea, we conceive they had not; whereby the earl of Torrington may come to be tried for his life, for facts committed several months before this power was given or desired: we think it reasonable, that every man should be tried by that law that was known to be in force when the crime was committed.

2dly, It is by virtue of the said act of 13 Car. II. that the earl of Torrington was judged by this House not to have the privilege of a peer of this realm for any offences committed against the said act; and there is no law, as we conceive, by which the said earl could have been debarred from enjoying the privilege of a peer of this realm; which act making no mention of commissioners of the admiralty, but of a lord high admiral only, by whose authority alone all the powers given by that act are to be exercised, and without whose consent singly, no sentence of death can be executed, we think it of dangerous consequence, to expound a law of this capital nature otherwise than the literal words do import; and, as we conceive without precedent to pass even explanatory laws, much less such as have a retrospect in them, in cases of life and death, so we think it not at all necessary to make such a precedent at this time, there being an undoubted legal way already established to bring this earl to a trial by a lord high admiral.

3dly, The judges having unanimously declared, that the law marine was no where particularized in their books, whereby the power or jurisdiction of the lord high admiral may be ascertained, so that the practice is all that we know of it, we conceive it unprecedented and of dangerous consequence, that the jurisdiction exercised by the lord high admiral should, by a law, be declared to be in the commissioners of the admiralty, whereby an unknown,

known, and therefore unlimited power, may be established in them.

Rivers,	Oxford,	Herbert,
Huntingdon,	Maclesfield,	Craven,
Weymouth,	Tho. Roffen,	J. Exon,
Rocheſter,	Crewe,	Bolton,
Stamford,	Bathe,	J. Bridgewater.
Dartmouth,	Granville,	

*Die Jovis, 30° Octobris, 1690.*

Report was made from the committee appointed to inspect precedents, whether impeachments continue in *ſtatu quo* from parliament to parliament, of ſeveral precedents brought from the Tower.

After the conſideration of which precedents, and others mentioned in the debate, and reading the orders made the 19th of March 1678-9, and the 22d of May 1685, concerning impeachments; and after long debate thereupon, and ſeveral things moved,

The queſtion was put, whether James earl of Salisbury, and Henry earl of Peterborow, ſhall be now diſcharged from their bail?

It was reſolved in the affirmative.

Leave being given to any Lords to enter their diſſents, if the queſtion was carried in the affirmative, theſe Lords following do enter their diſſents in theſe reaſons:

1ſt, Becauſe, we conceive, it is a queſtion not at all relating to the real debate before us, but urged upon us, not for the ſake only of the two lords mentioned.

2dly, Becauſe we ought to have examined precedents of pardons, to ſee how far an impeachment was concerned, before we had adjudged the Lords diſcharged, or whether an impeachment could be pardoned without particular mention in



an act of grace, and what difference there is between an act of grace and an act of indemnity.

3dly, Because we did not hear the House of Commons, who are parties, and who, in common justice, ought to have been heard before we had passed this vote.

Bolton, North and Grey, J. Bridgewater,  
Stamford, Granville, Mablesfield,  
Bathe, Herbert,

*Die Jovis, 1<sup>o</sup> Januarii, 1690.*

*Hodie 3<sup>a</sup> vice lecta est billa,* An act for incorporating the proprietors of the water-house in York-buildings, and for the encouraging, carrying on, and settling the said water-works.

The question was put, whether this bill shall pass into a law?

It was resolved in the affirmative.

*Dissentient*

1st, Because there is, in this act, an arbitrary allowance left to the proprietors to exact what fines or yearly rents they please for serving the inhabitants with the said water.

2dly, And that there is no provision in the said act, that the proprietors shall engage for the making good the said leases and assuring the inhabitants they shall not want water, nor any to apply to for relief, in case the inhabitants are injured for want of water, or by any unreasonable exactions of the proprietors.

Offulstone.

*Die Martis, 16<sup>o</sup> Februarii, 1691.*

After debate on what had been offered by council and witnesses in relation to the bill for dissolving the marriage of the duke of Norfolk with his dutchess,

The question was put, whether proxies shall be used in the proceedings on this bill of the duke of Norfolk's?

It

It was resolved in the negative.  
 Dissentient?

1st, Because it is an inherent right of the peers of England to be summoned to parliament, and when they cannot attend in person, to be represented by their proxies; and no vote of the House of Lords alone can take away that right, which is established by the fundamental laws of our constitution.

2dly, If that such a vote could abolish this right, yet it was against the rules of justice to make it without hearing the persons interested in it, especially the number being very great.

3dly, If such a vote might be made, yet it was unreasonable for those Lords, who were against proxies, to make use of proxies in the previous question, which was, in effect, to make the Lords concerned to vote against themselves.

Bolton,	Nottingham,	J. Rivers,
Mulgrave,	Westmorland,	Stamford,
Chesterfield,	Radnor,	Culpeper,
Lexington,	J. Bridgewater,	Sandwich,
Effex,	Derby,	Effingham,
Willoughby,	Berkeley, S.	Lucas.

*Die Martis, 23<sup>o</sup> Februarii, 1691.*

The House went into consideration, and proceeded on the bill, intituled, An act for raising money by a poll payable quarterly for one year, for the carrying on a vigorous war against France.

The earl of Mulgrave reported from the Lords committees appointed to consider of expedients for the reservation of the privileges of this House, in reference to the poll-bill, some proceedings agreed on by them therein; and after consideration thereof,



The House was adjourned during pleasure, and put into a committee upon the said bill; and after some time spent in the said committee,

The House was resumed, and the lord Godolphin reported, That the committee had gone thro' the bill without any amendment, and that the committee think fit, there should be some entry made in the book upon occasion of passing the last clause in the bill. Then,

*Hodie 3<sup>a</sup> vice lecta est billa*, intituled; An act for raising money by a poll payable quarterly for one year, for the carrying on a vigorous war against France.

The question was put, whether this bill shall pass?

It was resolved in the affirmative. Leave having been asked and given for any Lords to dissent, if the question was carried in the affirmative, these Lords do dissent for the reasons following:

Because the substance of the proviso added at the end of the bill, for taking the accounts of the public monies, hath been in a bill by itself this present session of parliament, which having not passed through the two Houses, by reason of their disagreement upon some amendments offered by the Lords to the said bill, ought not, by the known and constant methods of proceedings, to be brought in again in the same session, and consequently, we conceive, the tacking of the said proviso to this poll-bill is unparliamentary, highly prejudicial to the privileges of the peers, and may be of dangerous consequence to the prerogative of the crown.

St. Albans, Rochester, T. Jermyn,  
Derby, Aylesbury, Scarfdale.  
Jo. Oxon<sup>s</sup>,

Then

Then the question was put, whether  
 Contents 28 there shall be an entry made in the  
 NotCont. 181 book upon occasion of passing the  
 last clause in the said bill?

It was resolved in the affirmative.

Leave having been asked and given for any  
 Lords to dissent, if the question was carried in the  
 affirmative, these Lords do dissent for the reasons  
 following:

Because, we conceive, that an entry on the jour-  
 nal of this House, to excuse the complying at this  
 time in a thing so unparliamentary, as the matter  
 now in question is, upon the account of the pre-  
 sent necessity or danger, how pressing or imminent  
 soever, will be of no force to prevent the doing  
 the same, when the like necessity or danger may  
 be pretended; but the consenting once to such un-  
 precedented proceedings may always be made use  
 of, as one argument more for the agreeing to them  
 for the future.

St. Albans, Rochester, T. Jermyñ,

Derby, Aylesbury, Scarfsdale.

Jo. Oxon',

*Die Mercurii, 7<sup>o</sup> Decembris, 1692.*

The House having been in a committee of the  
 whole House, in order to the giving advice to his  
 Majesty, and considering the papers brought in  
 by the earl of Nottingham; and being resumed,

The question was put, whether this  
 Contents 36 House shall now send to the House  
 NotCont. 48 of Commons for a conference, and  
 to propose to them, that a com-  
 mittee of both Houses should be appointed to con-  
 sider of the present state of the nation, and what  
 advice to give his Majesty upon it?

It was resolved in the negative.



Leave having been asked and given, that some Lords might protest, if the abovesaid question was carried in the negative, these Lords, whose names are underwritten, do enter their protestation in the reasons following:

1st, Because his Majesty having particularly and expressly desired the advice of his parliament at this time, when he so much seems to need it, no other method was, or, in our opinions, could be proposed, by which the two Houses might so well, and so speedily, be brought to that concurrence, which is necessary to render their advice effectual.

2dly, Because it appears by some papers already imparted to this House, that several members of the House of Commons are concerned in the matters before us, as having been so lately employed in his Majesty's service; and we conceive it the easiest, properest and fairest way of communication between the two Houses, to have so great and important a business transacted and prepared in a committee so chosen.

3dly, Because it cannot be expected that so many members of the House of Commons, from whom we shall need information, can, in any other manner, be here present so often, tho', with the leave of their House, as will be necessary for a sufficient enquiry into the several affairs now under consideration.

4thly, Because if the House of Commons intend also to give advice to his Majesty, 'tis very probable that both Houses of Parliament may receive such information severally, as will be thought fit to be communicated as soon as possible; and we conceive no way of doing that can be so proper or speedy as in a committee of both Houses.

5thly, Because in a time of such imminent danger to the nation, by reason of so many miscarriages as are supposed generally to be committed,

mitted, the closest and strictest union of both Houses is absolutely necessary to redeem us from all that ruin, which, we have too much cause to fear, is coming upon us.

Shrewsbury, Marlborough, De Longueville,  
 Stamford, Aylesbury, Montague,  
 Monmouth, Cholmondeley, Bathe,  
 Crewe, Mulgrave, Macclesfield,  
 Torrington, Cornwallis, Warrington,  
 Granville, Vaughan, Fitzwalter.

*Die Martis, 3<sup>o</sup> Januarii, 1692.*

The Lords having been in Westminster-Hall, on the trial of the lord Mohun, for the murder of Mr. Mountford, and heard evidence on both sides, and being returned into their House,

*Hodie 3<sup>a</sup> vice lecta est billa*, intituled, An act touching free and impartial proceedings in parliament.

Contents	42	} 45	The question was put, whether this bill shall pass?
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Before the putting of the abovesaid question, leave was asked and granted for any Lords to dissent, which way soever the question was carried; and the Lords, whose names are hereunder subscribed, do dissent in the reasons following:

1<sup>st</sup>, Because the principal objection made to this bill was the great danger that might happen thereby, of the too long continuing this present parliament, which is an ill consequence that we can no ways apprehend, since we hope and humbly conceive, his Majesty will never be capable of taking any advice of that kind, so plainly destructive to the subjects just rights of election to frequent parliaments, and so many ways inconsistent with the good of this nation.

2<sup>dly</sup>,



2dly, Because we are not only very sensible of the just occasion given for such an act (though we are loth to enlarge upon so tender a subject) but have good reason to believe the House of Commons would not have begun and passed a bill of this nature, where the members of that House are so particularly concerned, without having been fully satisfied in the reasons for it, and plainly convinced of that great need the people of England are in, at this time, of so just and wise a provision.

Warrington,	Cumberland,	Mulgrave,
Thanet,	Rivers,	Marlborough,
De Longueville,	Vaughan,	Cholmondeley,
Weymouth,	Sandwich,	Carnarvon,
Montague,	Clifforde,	Aylesbury,
Denbigh,	Stamford,	Ashburnham,
Fitzwalter,	J. Arundell,	

*Die Martis, 31<sup>o</sup> Januarii, 1692.*

Contents 30 The question was put, whether the  
NotCont. 50 House shall go on?

It was resolved in the negative.

Dissentient

Because it may be of dangerous consequence in cases of blood.

Somerset,	Pembroke,	Huntingdon,
Dorset,	Norfolke,	Halifax,
Devonshire,	Bedford,	J. Bridgewater,
Scarborough,	Shrewsbury,	Kent,
Mulgrave,	Westmorland,	Lawarr,
Cornwallis,	Arundell,	Radnor.
Northumberland,	Monmouth,	

*Die Mercurii, 8<sup>o</sup> Martii, 1692.*

*Hodie 3<sup>a</sup> vice lecta est billa, intituled, An act for reviving, continuing and explaining several laws therein mentioned.*

The

The question was put, whether this bill shall pass.

It was resolved in the affirmative.

Dissentient.

Because the following provisos were not admitted. (Provided always, That no search shall be at any time made in the house or houses of any of the peers of this realm, by virtue of the said act of printing, without oath being first made, any thing herein to the contrary thereof in any wise notwithstanding.)

(Provided always, and be it enacted by the authority aforesaid, That if the names of the printer and the author of any book be affixed to, and printed in the same book, that then, and in such case, it shall not be necessary to take out a licence for the printing the said book.)

And we conceive, that the benefit which may accrue to the public by the continuance of the several acts mentioned in the bill, will not counter-vail the prejudice there may be in many respects by rejecting the aforesaid clauses, which we offered as amendments to the bill for preventing abuses in punishing seditious, treasonable and malicious books and pamphlets, and for regulating of printing and printing-presses.

Because it subjects all learning and true information to the arbitrary will and pleasure of a mercenary, and, perhaps, ignorant licenser, destroys the properties of authors in their copies, and sets up many monopolies.

Mulgrave,	Maclesfield,	Lincolne,
Hunfdon,	Granville,	Stamford,
Halifax,	Vaughan,	Marlborough.
Ossulstone,	Shrewsbury,	

Die



*Die Jovis, 23<sup>o</sup> Novembris, 1693.*

It is resolved, and this day ordered, by the Lords spiritual and temporal in parliament assembled, that this House will not receive any petition for protecting their Majesties servants, and that this order be added to the standing orders of this House.

Against which order, the Lords whose names are subscribed, do enter their protestations for these reasons :

1<sup>st</sup>, That it hath been usual in all times to relieve the King's servants in these cases, upon their petition in parliament.

2<sup>dly</sup>, That this order seemed to us to be grounded upon a mistake, which was, That the King's servants in ordinary were relieveable otherways, that is, the servants above stairs by the lord chamberlain, and those below by the lord steward and the board of greencloth, which is found impracticable, for neither the lord chamberlain's order, nor the order of the board of greencloth, can discharge any of the King's servants that are imprisoned for debt; all that they have ever done, or can do, is to commit those who arrest them to safe custody, who may redeem themselves (and have often done) by *habeas corpus* the next day, and consequently the servant left without remedy.

3<sup>dly</sup>, Whereas it hath been suggested, That at least four hundred of the King's servants may claim freedom from arrests, and consequently this House be too much burthened with their petitions; that number seems to comprehend the extraordinary servants also, who claim no privilege, and are declared by an order of council, made in King Charles the second's time, to be incapable of protection from their just debts: whereas the servants in waiting are a far less number, and experience hath

bath shewed us, that this House hath not been troubled with above two or three of their petitions, at most, in any one session.

4thly, It seems unreasonable to us, that the King (who is the head of the parliament) should have his servants in ordinary taken from him, more than is suffered to any member of either House of parliament.

5thly, This order, which in general terms declares, that this House will not receive any petition for protecting the King's servants, seems to us to bear hard upon their Majesties privileges, no reason being given for the same.

Norfolke & Marshal, Newport, Westmoreland,  
Jo. Oxon', J. Norwich, Mablesfield,  
P. Winton, Ed. Wigorn', Sy. Eliens',  
Tho. Lincolne,

The last reason was directed, by order of the 30th of November, to be expunged, but the above may be depended upon as a genuine copy.

*Die Veneris, 22<sup>o</sup> Decembris, 1693.*

The House resumed the adjourned debate, upon the petition of the dutchess of Grafton and William Bridgeman, Esq; complaining of the judges of the King's Bench, and,

The question being put, whether the said dutchess of Grafton and William Bridgeman shall have leave to withdraw their petition?

It was resolved in the affirmative.

Leave having been asked and given for any Lords to dissent to the abovesaid question, the Lords whose names are underwritten do dissent as follows:

Because we conceived it proper, at the time that leave was granted to withdraw the petition, that an order should be given to have a further information brought before this House, of the proceedings of the



the King's-Bench, in the case of William Bridgeman and Rowland Holt, and others, in order to have directed a criminal prosecution against the said judges, in case the House should have thought fit to proceed so far against them.

Somerfet,	Marlborough,	Maynard,
Scarfdale,	Aylesbury,	Tho. Menev,
Rocheſter,	Weymouth,	Ashburnham.
Wincheſter,	Macleſfield,	

*Die Veneris, 5<sup>o</sup> Januarii, 1693.*

Upon a report of a conference with the Commons, that they agree to all the amendments made by the Lords to the bill touching free and impartial proceedings in parliament, except the last clause,

The question was put, whether this  
 Contents 36 House shall agree with the House  
 Not Cont. 25 of Commons?

It was resolved in the affirmative.

Leave having been asked and given for any Lord to dissent to the abovesaid question, the Lords whose names are underwritten do dissent as followeth:

Because, that an act complains of corruption in former parliaments, and designs to provide against it for the future, ought not, in our opinion, to contain a clause, to allow any one member of the House of Commons to be excepted from the general rules prescribed to hinder all the members from taking employments, especially the speaker of that House, who, if he can be capable of being corrupted, may, by himself alone, do much more mischief than a great many of the members can do together; and this clause allowing the speaker of the House of Commons to be capable of such preferments, advantages and employments, which all other members are debarred from,

from, by virtue of this act, seems to establish the possibility of corruption in him by a law, which we conceive, would be scandalous for the present, and of very dangerous consequence in times to come.

Rochester,

H. London,

*Die Mercurii, 10<sup>o</sup> Januarii, 1693.*

After consideration of the expedition at sea, the last summer, and hearing the admirals, and reading the letters and orders in relation to that business,

It was resolved upon the question, that the admirals who commanded the fleet last summer have done well in the execution of the orders they received.

Leave having been asked and given for any Lords to dissent from the abovesaid resolution, the Lords whose names are hereafter subscribed dissent in the following reasons :

1<sup>st</sup>, Whereas by an order of the admiralty, bearing date the 19<sup>th</sup> of May last, the admirals were to direct Sir George Rook, that after their parting with him, he should steer such a course for his passage to Cadiz, as should be thought most safe by a council of war, with relation as well to the Brest fleet, if gone out to sea, as the Thoulon squadron : it does not appear to us, that there has been any council of war from the two-and-twentieth of May to the fourth of June, which was the day the signals were given for their parting from the Streights fleet; which last council of war was not called till after the signals for parting were given, and occasioned by the accident of the Turkey fleet's being becalmed.

2<sup>dly</sup>, That though it does appear by the result of the council of war, of the fourth of June, that they had no intelligence where the enemy was, yet  
notwith-



notwithstanding we do not find in that council, it was so much as proposed, how to get intelligence where the Brest fleet was, pursuant to the order of the admiralty of the nineteenth.

3dly, We conceive it to be the duty of an admiral or general to use his utmost endeavours to discover the motions of an enemy, without an order from his superiors, and much more when he has one.

4thly, Their not sending one or more good sailors to find out if the French fleet were sailed from Brest, as also what course they steered, so as to give intelligence to our main fleet, at a station appointed, before they parted with Sir George Rooke, was, as we conceive, the chief cause of the misfortune that happened to the Turkey fleet.

5thly, It appears by the admiral's own letters to the Admiralty, of the fourteenth of July and eighteenth of September last, that at a council of war, held on the two-and-twentieth day of May, they were of opinion, that that part of the Admiralty's order of the nineteenth, which related to the course Sir George Rooke was to steer, was unreasonable and impracticable, yet they did not send up to have it explained, though the fleet did not sail till the thirtieth: this looks as if they rather designed an artificial excuse for doing nothing, than the discharge of the trust reposed in them.

6thly, That Sir George Rooke's narrative, which might have given a farther light to the inquiry into the admiral's conduct last summer, was not allowed to be read.

7thly, This vote seems to approve of the behaviour of the admirals in the last summer's expedition, which differs, as we conceive, from the opinion the greatest part of Europe has of it, and may be of ill consequence, by giving our allies no very fair prospect of better success.

8thly,

8thly, Because by this vote is prevented any further inquiry into the last year's miscarriage, relating to the admirals, if any new matter should arise from new evidence; and it may stop any prosecution of the King's, in case he should think fit to proceed further in that affair.

Bolton,	Oxford,	J. Bridgewater,
Berkeley of Berkeley,	Ossulstone,	Devonshire,
Strafforde,	Clifforde,	Stamford.

*Die Mercurii, 14<sup>o</sup> Martii, 1693.*

Several Lords who had entered protections being heard, some of them were struck out, and the following order made, viz.

It is ordered and resolved, upon the question, by the Lords spiritual and temporal in parliament assembled, that no Lord shall enter any written protection in the book of protections, until after he shall have personally attended this House, in the same session of parliament.

Leave was given for any Lord to dissent to the abovesaid order.

That the taking off any part of the undoubted privileges, which every peer of England enjoys by his birth-right, by a vote in a pretty thin House, especially when a peer of this House moved on the behalf of the absent Lords, that a day might be appointed for the debate of the matter in which they were so much concerned, seems in the manner of it to make too light of what this House ought to esteem so sacred as the privileges of the peerage of England.

Norfolke and Marshal.

*Die Martis, 24<sup>o</sup> Aprilis, 1694.*

*Hodie 3<sup>a</sup> vice lecta est billa,* intituled, An act for granting to their Majesties certain rates and duties upon tunnage of ships or vessels, and upon beer,

M

ale,



ale, and other liquors, for securing certain recompences and advantages in the said act mentioned, to such persons as shall voluntarily advance the sum of fifteen hundred thousand pounds towards carrying on the war against France.

The question was put, whether this bill shall pass?

It was resolved in the affirmative.

Dissentient

Against that part of the bill which relates to the incorporating the governor and company of the bank of England, and the clauses that concern the same.

Aylesbury, Winchelsea, Montague,  
 Rochester, Sandwich, Nottingham.  
 Essex, Tho. Roffen,

*Die Martis, 18<sup>o</sup> Decembris, 1694.*

*Hodie 3<sup>a</sup> vice lecta est billa*, intituled, An act for the frequent meeting and calling of parliaments.

The question was put, whether this bill shall pass?

It was resolved in the affirmative.

Leave being asked and given for any Lord to dissent, we do dissent from this vote, because it tendeth to the continuance of this present parliament, longer than, as we apprehend, is agreeable to the constitution of England; besides the ill consequences which, in many respects, may attend it.

Devonshire, Aylesbury, Halifax.  
 Weymouth,

*Die Sabbati, 19<sup>o</sup> Januarii, 1694.*

The amendments made by the committee to the bill, intituled, An act for making wilful and corrupt perjury, in certain cases, to be felony, were read the second time and agreed to.

And

And after debate,

The question was put, whether this bill shall be engrossed?

It was resolved in the negative.

These Lords following do dissent for this reason, because it has appeared by too many instances, not only in former times, but also very lately, how great need there is of such a bill as this, to deter men from those pernicious crimes of perjury and subornation.

Bolton,	N. Cestriens',	Culpeper,
Oxford,	Leeds, P.	Devonshire,
Normanby,	Somerset,	

*Die Luna, 18<sup>o</sup> Februarii, 1694.*

The House this day resuming the farther consideration of what remains undetermined in respect to the proceedings and trials in Lancashire; and after hearing the judges who acted in those trials,

And debate thereupon;

The question was put, that it is the opinion of this House, that the judges, who have any ways acted in relation to the Lancashire trials, have done their duty according to law?

It was resolved in the affirmative.

Dissentient',

1st, Because, we conceive, that a witness, who, in open court, did twice mistake the prisoner at the bar, against whom he was a witness, ought not to be recommended from a judge to a jury, as a witness not to be excepted against. And,

2dly, Because there appeared several hard circumstances in the proceedings, and particularly the refusing to cause the witnesses to be examined apart, when desired by the prisoners, which in a constitution, where the judges ought to be of council for the prisoners, seems to be contrary to the intent of the law for the security of the innocent, and, that



in consideration, may be of too ill consequence to receive countenance in this supreme court.

Sandwich, Guildford, Rochester.  
Nottingham,

*Die Martis, 16<sup>o</sup> Martii, 1694.*

The heralds being this day heard at the bar (pursuant to the order of the 16th instant) in relation to descents of baronies by writ;

After debate,

This question was put, Whether if a person summoned to a parliament by writ, and sitting, die, leaving issue two or more daughters, who all die, one of them only leaving issue, such issue has a right to demand a summons to parliament?

It was resolved in the affirmative.

The Lords following do dissent for these reasons:

1<sup>st</sup>, Because, we conceive, it is more suitable to the methods of all courts of justice, and therefore particularly more proper for this supreme court to give judgment in particular cases, when they are brought to be tried before them, than to make a general rule, which possibly may not comprehend all future accidents, and may be liable to many great inconveniences that cannot now be foreseen, and which, in its nature, seems to be matter fitter to be provided for by a law than a judgment.

2<sup>dly</sup>, And because there were several precedents offered to be produced, to shew that the practice, upon several occasions, had been directly contrary to this rule, and because the heralds, who, we conceive, disproved the printed precedents, were not allowed time to produce precedents to shew where baronies descending to several daughters were extinguished, and new creations of those titles given to others.

3<sup>dly</sup>,

3dly, Because, we conceive, this general rule now made, is in opposition to a judgment solemnly given by this House, upon hearing council on all sides, in a particular case lately referred by the King; and is grounded on a bare motion made by some Lords, who, we conceive, were no ways concerned in that judgment.

4thly, Because the last rule does likewise seem to us to be repugnant to the judgment of this House in the case between the earl of Oxford and lord Willoughby of Eresby, then referred to this House by King Charles I. and by their Lordships thought fit to be referred to the consideration of the judges, as a matter of that importance that deserved their assistance; who, upon mature deliberation, returned their opinion to their Lordships in these words, *viz.*

“ As to the baronies of Bulbeck, Sandford, and  
“ Badlesmere, our opinion is, that the same de-  
“ scended to the general heirs of John the fourth  
“ earl of Oxford, who had issue John the fifth  
“ earl of Oxford, and three daughters; one of  
“ them married to the lord Latimer, another to  
“ Winckfield, and another to Knightley: which  
“ John the fifth earl of Oxford dying without  
“ issue, those baronies descended upon the said  
“ daughters as his sisters and heirs, but those dig-  
“ nities being entire, and not dividable, they be-  
“ came incapable of the same, otherwise than by  
“ gift from the crown, and they, in strictness of  
“ law reverted unto, and were in the disposition  
“ of King Henry VIII. and yet, nevertheless, we  
“ find that four several earls of Oxford successively,  
“ after that descent to three daughters, as heirs  
“ males of the said earldom, assumed and took  
“ upon them those honours and titles in their wri-  
“ tings, leases and conveyances; and their eldest  
“ sons have been stiled, in the life-time of their



“ fathers, by the name and title of lord viscount  
 “ Bulbeck, and so reputed to be, and the House  
 “ did vote that the baronies were in his Majesty’s  
 “ disposition, and, in their report to the King,  
 “ did declare, that for the baronies, they were  
 “ wholly in his Majesty’s hand to dispose at his  
 “ own pleasure.”

5thly, Because, we conceive, that it is not in the power of this House, either to explain or repeal an act of parliament, though a private act, in a judicial manner, but only in our legislative capacity; and there being an act passed in 15 Charles II. No. 15. for settling the lands of the earl of Kent, which disposes of the barony of Lucas of Crudwell, and declares the King’s power to dispose of the barony, when more than one female heir, to whom, or to which, he pleases, or to hold in suspense, or to extinguish the same; we cannot but think this vote is in direct opposition to that act.

Norfolk and Marshal, J. Bridgewater, Brooke,  
 Herbert, Rochester, Scarbrough.  
 Stamford, Torrington,

*Die Jovis, 18<sup>o</sup> Aprilis, 1695.*

The House this day taking into consideration the several examinations and reports made and taken relating to the convex lights, and a lease of land lately made by the city of London to the marquis of Normanby.

After debate, the question was put, whether upon the examination taken in relation to the matter of the convex lights, while the orphans bill was depending in this House, or concerning a lease of some lands lately passed to the lord marquis of Normanby, by the city of London, there does appear any just cause of censure from this House, upon the said lord marquis of Normanby?

It

It was resolved in the negative.

Dissentient.

Because we humbly conceive it to be an offence of an high and extraordinary nature, that any peer should presume to deliver the opinion of this House, without doors, to persons whose cause has been pleaded at this bar, so as to induce them to compound their interest, or oblige them to unwilling compliances, more especially in a matter depending before us, in a bill agreed to by the House of Commons.

Which we humbly conceive to have been plainly made out against the marquis of Normanby, by the depositions of Mr. Hobbs, Sir Thomas Millington, Mr. Nois, and Mr. Lilly.

Mr. Hobbs having informed this House, upon oath, that he was absent and sick, and resolved to come to no agreement with Hutchinson, but that Sir Thomas Millington had some time afterwards given him this account, that the marquis of Normanby came out several times from the House of Lords, assuring him the bill would not pass, unless an agreement was immediately made with the said Hutchinson, which, with the clamours without doors, were the reasons that compelled him, and those others that signed, to agree.

Sir Thomas Millington having declared, upon oath, that he was forced and compelled to sign the aforesaid agreement, by frequent intimations and assurances given by the marquis of Normanby, that the bill should, or would not pass, unless he and his partners did agree with Hutchinson, as likewise by the clamours, without doors, of those concerned for the passing of the orphan bill.

Mr. Nois (agent for the orphans) likewise deposing, that he heard the marquis of Normanby tell Sir Thomas Millington, the bill would be lost, unless the aforesaid agreement was concluded;



both affirming that no other member of the House of Lords, to their knowledge, gave any such intimation or account.

Mr. Lilly also deposing, that all present were forced to sign a paper (which he hoped would prove no agreement) because they were compelled to it by the tumults at the doors of the House of Lords, being afraid of violence from the orphans agents and solicitors in case they had not signed it.

Which irregular proceeding of the marquis of Normanby, we conceive fully proved by witnesses of undoubted reputation, who acted in pursuance of the account they gave upon oath; which are the more remarkable, because it appears that Roman Ruffel, servant and agent to the said lord, had one 32d part made over to him immediately, before the hearing in the House of Lords; which share was assigned to Mr. Moore, by Hutchinson, to be made over for promoting his interest in parliament, and was, to that purpose (as the writing testifies) disposed of to Roman Ruffel, which we conceive, by the proofs, valuable two thousand pounds.

Which share, Mr. Moore deposes, was given to Roman Ruffel, and Ruffel confesses to have received for no other consideration (but having been servant to many lords) to solicit and apprise them of the case; yet it appears by his own confession he knew not the merits of the cause, nor could name any other lord, whom he had applied to, but the marquis his master, who brought in the petition for Hutchinson, Roman Ruffel having acquainted him he had a concern with him.

We likewise protest against this vote, in relation to the second part of it, which concerns the lease made by the city to the marquis of Normanby.

Because we conceive it a present avowedly given to the said marquis, for gratifying him for services done

done to the city, in the House of Lords, and for the expectation of like services for the future, and by him received as such; which we are humbly of opinion is sufficiently proved, and in such manner, as we apprehend, is highly to the dishonour of this House.

First, This appears by the entries in the city books, where it was agreed by the committee of the city lands, to demand an extraordinary power of the common council, to grant a lease under such extraordinary conditions, as were not agreeable to their common methods: in which entry, the only motive and argument that appears in the books is expressed in these words, *viz.*

*Com' Concil' tent' 24<sup>o</sup> Die Jan. 1693.*

At a common-council,

A motion was made for gratifying a person of honour, who had been very friendly to the interest of the city, in the House of Lords, and likely to continue so, with a long term of years in about two or three acres of the city ground, lying and being in Conduit-Mead, behind Clarendon-House.

The question being put, whether this court will empower the committee, for settling and demising the city lands, to grant unto the said lord an additional term in the said ground, at and under such rents, covenants and conditions as the said committee shall approve of?

It was carried in the affirmative.

And referred to the committee accordingly.

And likewise the same is again entered in the books in the last determination of the committee for city lands, as the only motive to induce them to make such a grant, in these words, *viz.*

It being by special order of this honourable court referred to us, in order to the gratifying a person of honour, who hath been very friendly to the interest



terest of the city, in the House of Lords, and is likely to continue so, &c. and signed by Sir Robert Clayton, and several of the parties consenting to this lease, who were summoned as witnesses by the marquis of Normanby.

It being further made evident (as we humbly conceive) by the oaths of Mr. Lane, the city comptroller, Mr. Morrice, a member of the House of Commons, and Mr. Barlow, one of the committee, who deposed the arguments made use of for this lease, in several meetings of the committee, were the services done, and like to be done the city by the marquis of Normanby; particular mention being made in their depositions of his assistance in flinging out Gulston's bill, and his helping that of the orphans.

And we further conceive (with great deference to this honourable House) that the motives and considerations, sworn by several of the committeemen, who were consenting to such grant or lease, as inducements to them to pass it, appear upon examination to be no valuable consideration.

As, the building a great house of thirty or forty thousand pounds upon the lands, the securing their water-pipes, the obtaining several years arrears of rent, the making a brick drain; which alledged considerations seem to us of no weight, the marquis being under no covenant in his lease to build such house, the pipes for their water being secured for seventy years to come, by their former lease, the arrears having been paid, not by the said marquis, but by the tenants under the first lease, when demanded.

And moreover, in our humble opinion, there is little room to doubt, but that the said lease was given and taken as a gratification, Mr. Lane giving it in, upon oath, from the marquis of Normanby's own mouth, that he looked upon the  
lease

lease as a present to him from the city for his kindneses and services, and that they were suiters to him, not he to them.

Finally, We are the rather convinced of it, because the depositions of Mr. Lane, Mr. Morrice, and Mr. Barlow, are suitable to the entries in the city books, which most of the evidence summoned for the marquis of Normanby have their hands to, where no mention is made of those other matters sworn by them as considerations inclining to grant such lease.

Induced by these parts of the evidence recited (having entered the whole upon our book) that nothing may be concealed which may any ways tend to the justification of the noble lord concerned, and for the reasons aforesaid, we protest against this vote, not being able to satisfy ourselves, that this high court of honour and judicature had no just grounds to pass some censure on the marquis of Normanby, upon the evidence given to this House, on the matters of the convex lights and city lease.

Manchester, Effex, Aylesbury,

Torrington, Stamford, Monmouth.

Cholmondeley,

*Die Jovis, 9<sup>o</sup> Januarii, 1695.*

The House proceeded upon consideration of the amendments made to the bill for regulating of the coinage, to which the Commons disagreed.

A clause agreed by the Lords, to be added to the said bill, that the deficiencies of clipped or diminished money may be ascertained and known, in order to the making them good at the public charge, was read.

And after debate thereon,

The question was put, whether to insist upon the said clause?

It



It was resolved in the negative.  
Dissentient

Because, we conceive, that tho' in the bill for new regulating the coin of this kingdom, the Commons have taken care to make good the deficiencies of such clipped monies only as were to be paid to the King on the account of his Majesty's revenues or taxes, it was agreeable to common equity and honesty, that provision should be made to supply the deficiencies of all other clipped monies whatsoever, that were to pass in payments among the subjects of this kingdom; and therefore we could not consent to the leaving out this clause that had been added to the bill by the Lords, which had so impartially taken care of the benefit and advantage of the subject in general, so much for the honour and justice of the House of Peers.

Rochester, Kingston, H. London.

Marlborough, Clifford, H. London.

Another clause disagreed to by the Commons, That after the second of February, 1695, until the end of the next session, it should be lawful to export any coined money, without paying any customs or duties for the same, making due entries thereof, as for other merchandize, was read. And,

The question being put, whether to insist upon the said clause?

It was resolved in the negative.  
Dissentient

Because we conceive it inconsistent with the rules of common prudence, when the bill for new regulating the coin of this kingdom provides, That all the clipped money should be recoin'd up to the old standard of the mint, there should not be a liberty granted by law to export the coin of this kingdom, whilst the occasion lasts of supporting so great an expence for the armies abroad; and so long

long as the exportation of bullion is permitted, and that of coin prohibited, it seems to us undeniable, that the coin must be melted down again into bullion, which, we conceive, will be more prejudicial to the nation, and not so easily to be drawn back by a ballance of trade, as if that wealth were preserved in the coin of this kingdom.

Rocheſter,            Marlborough.

*Die Veneris, 17<sup>o</sup> Januarii, 1695.*

The Houſe took into conſideration the petition of Sir Richard Verney, Knt. preſented to his Maſteſty, praying a writ of ſummons to parliament, and his Maſteſty's reference thereupon to this Houſe.

And after ſome time ſpent in debate,

The queſtion was put, whether the petitioner, Sir Richard Verney, shall be heard at the bar by his Not Cont. 20 council upon his petition?

It was reſolved in the affirmative.

Leave having been aſked and given to any Lord to proteſt, if the queſtion ſhould be carried in the affirmative, we whoſe names are underwritten do proteſt, for the reaſons following:

1<sup>ſt</sup>, Becauſe, as it ſeems to us, the petitioner's caſe has been already heard and adjudged in this Houſe, upon his former petition, whereby he claimed to have a writ of ſummons to parliament, from the ſame anceſtor, by the ſame pedigree, and under the ſame writ of ſummons, by which he makes his claim in this petition.

2<sup>dly</sup>, Becauſe the judgment given by this Houſe, upon Sir Richard Verney's former petition, was not, that he had no right to a writ of ſummons, by the name of lord Broke, but generally, that he had no right to a writ of ſummons upon his caſe, as ſtated in his petition.

3<sup>dly</sup>,



3dly, Because, we conceive, it may tend infinitely to prejudice the judicature of this House, and to weaken the security that all subjects have, by the judgments of this great court, if the Lords shall permit judgments once given, in so solemn a manner, to be reviewed.

Somerſet,	Bolton,	Mancheſter,
Bradford,	Culpeper,	Stamford,
J. Bridgewater,	Devonſhire,	Suffolke.
Monmouth,	Maclesfield,	

*Die Veneris, 24<sup>o</sup> Januarii, 1695.*

*Hodie 3<sup>a</sup> vice lecta est billa,* intituled, An act to prevent false and double returns of members to serve in parliament.

Contents 27 The question was put, whether this  
Not Cont. 20 bill shall pass?

It was resolved in the affirmative.

Leave having been asked and given to any Lords to protest, if the question should be carried in the affirmative, we whose names are underwritten do protest, for the reasons following:

By reason of a clause in this bill, which enacts in these words following:

“ In case that any person or persons shall return  
“ any member to serve in parliament for any  
“ county, city, borough, cinque-port or place,  
“ contrary to the last determination in the House  
“ of Commons, of the right of election in such  
“ county, city, borough, cinque-port or place,  
“ that such return so made, shall, and is hereby  
“ adjudged to be a false return.” To which we  
cannot agree, because, we conceive, that the confirming, by act of parliament, the proceedings in another place, which have never been examined here, is derogatory to the dignity, and inconsistent with the justice of the House of Peers. And,

Because

A. 1695.

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Because the enacting, that the determination of the House of Commons, in the case of returns of members to sit in that House, shall be made the rule for the future, seems to us, to erect a court of judicature there, which, by the constitution of the government, and the constant practice of all ages to this day, hath never yet been allowed in the House of Commons, and may contribute to the introducing of evil precedents, and be of dangerous consequence hereafter.

Rochester, Bathe, R. Ferrers,  
Granville, Jeffreys, Tho. Meneven?

*Die Jovis, 13<sup>o</sup> Februarii, 1695.*

Council were this day heard upon the petition of Sir Richard Verney, Knt. praying a writ of summons to parliament, as also his Majesty's council.

And consideration and debate had thereof.

The question was put, whether by what hath been made appear to this House, the petitioner, Sir Richard Verney, hath a right to a writ of summons to parliament, by the name and title of Willoughby de Broke?

It was resolved in the affirmative.

To which the Lords, whose names are underwritten, do dissent, for the reasons following:

1st, Because it is apparent, by the ancient journals of the Lords House, that Sir Robert Willoughby, the petitioner's ancestor, and his son and grandson, sat in the House by the name of lords Broke, and never by lord Willoughby de Broke.

2dly, We conceive, no lord, whose ancestors were called to the Lords House, by writ of summons, can claim a writ by descent from those ancestors, to sit in the House by any other name than those ancestors sat by.

3dly,



3dly, The House having, in the last parliament, adjudged, that the petitioner had no right to a writ of summons to parliament, when he petitioned to be summoned as lord Broke, we conceive he can sit by no title at all.

J. Bridgewater, Stamford, Bradford,  
Somerset, Culpeper,

*Die Veneris, 6° Martii, 1695.*

*Hodie 3<sup>a</sup> vice lecta est billa,* intituled, An act for continuing severall duties granted by former acts upon wine and vinegar, and upon tobacco, and East-India goods, and other merchandize imported, for carrying on the war against France.

The question was put, whether this bill shall pass?

It was resolved in the affirmative.

Dissentient,

I dissent to the said bill, by reason of a clause therein, concerning the price of guineas, which, I conceive, is prejudicial to the privileges of this House, and the trade of the country.

Abingdon.

*Die Martis, 7° Aprilis, 1696.*

Report was made from the committee of the whole House, upon the bill to restrain the wearing of all wrought silks or stained callicoes imported, of the manufacture of Persia and the East-Indies, that they had heard council for and against the bill.

Ordered, That the House be put into a committee again upon the said bill on Thursday next.

The question was put, whether council and witnesses shall be heard to-morrow, upon the subject-matter of this bill?

It was resolved in the affirmative.

Leave having been asked and given for any Lords to dissent, if the question was carried in the

the affirmative, we whose names are underwritten do dissent, for the reasons following:

1<sup>st</sup>, Because it was never known, that where a bill was once referred to a committee of the whole House, the House did hear council and examine witnesses to any part of the bill so committed, or when that committee was still subsisting.

2<sup>dly</sup>, Because, we conceive, such proceedings may occasion severe reflections upon the honour of this House, and may be of fatal consequence, by inverting the laws and customs of parliament, upon which our constitution depends.

Bolton, Stamford.

*Die Mercurii, 23<sup>o</sup> Decembris, 1696.*

*Hodie 3<sup>a</sup> vice lecta est billa*, intituled, An act to attain Sir John Fenwick, Bart. of high treason.

Contents 68 The question was put, whether this Not Cont. 61 bill shall pass?

It was resolved in the affirmative.

Leave being asked and given for any Lord to dissent, if the question was carried in the affirmative, we whose names are underwritten do dissent, for the reasons following:

Because bills of attainder against persons in prison, and who are therefore liable to be tried by law, are of dangerous consequence to the lives of the subjects, and, as we conceive, may tend to the subversion of the laws of this kingdom.

Because the evidence of grand jurymen, of what was sworn before them against Sir John Fenwick, as also the evidence of the petty jurymen, of what was sworn at the trial of other men, were admitted here; both which are against the rules of law, besides that they disagreed in their testimony.

Because the information of Goodman in writing was received, which is not by law to be admitted; and the prisoner, for want of his appearing face to

N.

face,



face, as is required by law, could not have the advantage of cross-examining him.

And it did not appear by any evidence, that Sir John Fenwick, or any other person employed by him, had any way persuaded Goodman to withdraw himself; and it would be of very dangerous consequence, that any person so accused should be condemned; for by this means a witness, who shall be found insufficient to convict a man shall have more power to hurt him by his absence, than he could have if he were produced *viva voce* against him.

And if Goodman had appeared against him, yet he was so infamous in the whole course of his life, and particularly for the most horrid blasphemy which was proved against him, that no evidence for him could or ought to have any credit, especially in the case of blood.

So that in this case, there was but one witness, *viz.* Porter, and he, as we conceive, a very doubtful one.

Lastly, Because Sir John Fenwick is so inconsiderable a man, as to the endangering the peace of the government, that there needs no necessity of proceeding against him in this extraordinary manner.

Huntingdon,	Gil. Hereford,	Hunsdon,
Thanet,	Willoughby,	Chandos,
N. Dunelm',	Kent,	Scarsdale,
Halifax,	R. Ferrers,	Dartmouth,
Lindsey,	Granville,	Suffex,
P. Winton',	Fitzwalter,	Northampton,
Normanby,	Arundell,	Bathe,
Weymouth,	Lempster,	Tho. Roffen',
Tho. Menev',	Hereford,	Bristol,
R. Bath & Wells,	Carnarvon,	Leeds,
Craven,	Jonat. Exon',	Rocheſter,
Carlisle,	Jeffreys,	Leigh,
Nottingham,	Northumberland,	Wilb. de Broke.
H. London,	Abingdon,	<i>Die</i>

*Die Sabbati, 23<sup>o</sup> Januarii, 1696.*

The order being read for taking into consideration the second reading of the bill, intituled, An act for the further regulating elections of members to serve in parliament.

And several petitions against the said bill being also read,

After debate,

Contents 37 The question was put, whether this  
Not Cont. 62 bill shall be read a second time?

It was resolved in the negative.

Dissentient<sup>s</sup>,

Because this bill did provide, that none but natural born subjects of England, and men of estates, should be capable of being chosen to serve in parliament, which we conceive most agreeable to the constitution and true interest of this kingdom.

Feverham,	Cholmondeley,	Sandwich,
Nottingham,	Bathe,	Weymouth,
Dartmouth,	Tho. Roffen <sup>s</sup> ,	Halifax,
Thanet,	Jeffreys,	Normanby.
Granville,	Tho. Menev <sup>s</sup> ,	

*Die Jovis, 15<sup>o</sup> Aprilis, 1697.*

Upon report from the committee of the whole House, on the bill to restrain the number and ill practice of brokers and stock-jobbers, that they had gone through the bill with some amendments,

The question was put, whether this  
Contents 25 House will agree to the amendments  
Not Cont. 34 made by the committee in leaving  
out these words, 6th skin, 35th and  
36th lines (made and entered into or)?

It was resolved in the negative.

Dissentient<sup>s</sup>,

Because this clause, without this amendment, hath a retrospect.



Normanby, Rochester, Bradford,  
Somerſet, Granville, Marlborough,  
Clifforde, T. Jermyn, Bathe.

*Die Jovis, 3<sup>o</sup> Martii, 1697.*

*Hodie 3<sup>a</sup> vice lecta eſt billa,* intituled, An act for diſſolving the marriage between Charles earl of Macclesfield and Anne his wife, and to illegitimate the children of the ſaid Anne.

The queſtion was put, whether this bill ſhall paſs?

It was reſolved in the affirmative.

Diſſentient,

Be cauſe, we conceive, this is the firſt bill of this nature that hath paſſed, where there was not a divorce firſt obtained in the ſpiritual court, which we look upon as an ill precedent, and may be of dangerous conſequence in the future.

Halifax, Rocheſter.

*Die Mercurii, 15<sup>o</sup> Junii, 1698.*

A conference was had with the Commons on the ſubject-matter of the Lords meſſage of the eighth inſtant, declaring they will proceed to the trial of Goudet and others at the bar of the Houſe; and report being made of what was offered by the Commons,

The queſtion was put, whether this Houſe ſhall inſiſt upon their declaration above-mentioned.

It was reſolved in the affirmative.

Diſſentient,

1<sup>ſt</sup>, Be cauſe the managers of the Houſe of Commons may have occaſion, in trials upon impeachment, to have recourſe to papers, books, and records, which they cannot ſo conveniently make uſe of in a croud.

2<sup>dly</sup>, It ſeems as reaſonable, that ſome proviſion ſhould be made for their convenience, and to protect

test them from the croud at the bar of this House, as in Westminster-Hall, the judicature of this House receiving no alteration by the place to which they adjourn; nor could the Lords think so, when even upon the desire of the Commons themselves in the earl of Stafford's case, being offered all imaginable convenience at the bar of this House, and finding themselves streightened thereby, the Lords appointed the trial to be in Westminster-Hall, on that consideration, as we conceive.

3dly, The noblest part of their Lordships judicature may not only hereby be lost, but what has been hitherto thought one of the greatest securities against attempts upon the constitution, by such a discouragement of the Commons from bringing up impeachments to the bar of this House, will be very much weakened.

Devonshire, Stamford, Haversham.

*Die Veneris, 1<sup>o</sup> Julii, 1698.*

After hearing council for and against the bill, intituled, An act for raising a sum, not exceeding two millions, upon a fund for payment of annuities after the rate of eight pounds per centum per annum, and for settling the trade to the East-Indies.

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Proxies	20	

And debate thereupon, the question was put, whether this bill shall be read a second time?

It was resolved in the affirmative.

Dissentient,

1st, Because this bill puts an unreasonable hardship upon the present East-India company, since it plainly appeared at the bar of this House, that a security, of which (we conceive) there was no reason to doubt, had been offered by the said company



pany for raising the whole two millions for the public service, whereas the bill investing the new subscribers with the trade upon the subscription of one million only, does not, as we conceive, give so much as a probability of raising more; and it may be reasonably enough doubted, whether the separate trade allowed in this bill, concurrent with a joint-stock, may not prove so inconsistent, as to discourage the subscription from ever coming near to the said million.

2dly, Because the bill puts a period to the charter of the East-India company, and gives the whole trade thither to other persons, without so much as suggesting that the said charter, or the trade carried on by virtue of it, hath been prejudicial to the king or kingdom, though the said company have an exprels clause in their charter, that it shall not be determined without three years warning, even if it should appear not profitable to the King or this realm; and the bill granting likewise a supply of two millions, in which the Commons pretended the House of Lords ought not to make any alteration; we are of opinion, their Lordships are thereby likewise deprived of the freedom of their vote in the matter of the East-India trade, to which it cannot be denied but they have an equal right with the Commons, and yet by its being joined to a bill of supply, this House must either be the occasion of disappointing so large and necessary a grant for the public service, or be put upon the unreasonable hardship of consenting to a matter which, tho' it seems never so unjust, it is fruitless for them to examine, if their amendments are not to be admitted, because offered to a money-bill, which we humbly conceive to be a manifest violation of the rights of this House, and tending to an alteration of the constitution of the government.

Halifax,

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Halifax,	Rochester,	Audley,
H. London,	Tho. Roffen,	Granville,
Willoughby,	Howard,	Peterborow,
Jeffreys,	Denbigh,	Dartmouth,
Berkeley of Berkeley,	E. Gloucester,	Berkeley,
P. Winchester,	Scarsdale,	Anglesey,
Torrington,	Godolphin,	Gulford.

*Die Jovis, 27<sup>o</sup> Aprilis, 1699.*

*Hodie 3<sup>a</sup> vice lecta est billa*, intituled, An act for granting to his Majesty the sum of one million, eighty-four thousand and fifteen pounds, one shilling and eleven pence three farthings for disbanding the army, providing for the navy, and for other necessary occasions.

The question was put, whether this bill shall pass?

It was resolved in the affirmative.

Dissentient<sup>s</sup>,

Because of the clause at the latter end of the bill, which constitutes commissioners for enquiring into, and taking an account of all such estates real and personal, within the kingdom of Ireland; as have been forfeited for high-treason by any persons whatsoever during the late rebellion within that kingdom; which, we conceive, was a matter foreign to this bill, and more proper for a bill by itself, and that the tacking of a clause of that nature is contrary to the ancient method of proceedings in parliament, and on that account, as we apprehend, may be of ill consequence to the freedom of debate in either House, and highly prejudicial to the privileges of the peers, and the prerogative of the crown.

Anglesey,	Raby,	Rochester,
Jo. Oxon <sup>s</sup> ,	Haversham,	Cholmondeley,
Suffolke,	Warrington,	Jeffreys.



*Die Martis, 23<sup>o</sup> Januarii, 1699.*

After hearing council at the bar, to argue the errors assigned upon the writ of error depending in this House, wherein Robert Williamson is plaintiff, and his Majesty, by his attorney-general, defendant,

And debate thereupon, this question was put, whether the judgment of reversal shall be reversed?

It was resolved in the affirmative.

Leave being asked and given for any Lord to dissent, these Lords, whose names are hereunto subscribed, do dissent, for the reasons following:

For that, we conceive, it did not appear, that ever any such judgment was given by the Exchequer before the annexing the court of Augmentations to the Exchequer.

For that since the dissolving and annexing of the said court of Augmentations, there hath no such judgment been given, unless in such cases, which were in the cognizance of the court of Augmentations before it was dissolved.

That the judgments in the case of Sir Henry Neville and Sir Thomas Wroth, and others of the like nature cited, seems to be by virtue of the powers of the court of Augmentations being annexed to the court of Exchequer.

That those courts were duly annexed, appears by the preamble of the statute 1 Eliz. cap. 4. by the lord chief justice Bromley's case, and by the case of the earl of Devonshire in Coke's reports, and for that the court of First-fruits and Tenths was dissolved and annexed in like manner to the Exchequer, as the court of Augmentations was; which powers, by that annexation, subsist in that court to this day.

Lonsdale,

A. 1699.

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Lonsdale, C. P. S. Stamford, W. Wigorn',  
Sarum, Bergevenny, Rich. Petriburg',  
Rivers, J. Culpeper, Audley.  
Haversham,

*Die Jovis, 8° Februarii, 1699.*

After reading the order of the nine and twentieth of January last, for resuming the adjourned debate concerning the settlement of the Scotch colony at Darien,

And long debate thereupon,

This question was proposed, That the settlement of the Scotch colony at Darien is inconsistent with the good of the plantation-trade of this kingdom.

Then the previous question was put,  
Contents 32 whether this question shall be now  
Not Cont. 26 put?

It was resolved in the affirmative.

Dissentient',

Because, as we conceive, there has not been made appear, in this debate, any ground sufficient to determine a point of so great importance, and yet it has been refused to allow time for due information in a matter of trade, which is very obscure, and of the highest consequence to the quiet and welfare of both nations in this conjuncture.

Normanby, Nottingham, Weymouth.

H. London,

*Die Veneris, 8° Martii, 1699.*

After long debate upon the evidence for and against the bill to dissolve the duke of Norfolk's marriage with the lady Mary Mordaunt, and to enable him to marry again, and the subject-matter of the bill,

The question was put, whether the  
Contents 47 said bill shall be read a second  
Not Cont. 30 time?  
It



It was resolved in the affirmative.  
 Dissentient,

1st, Because, we conceive, there was a contradiction in the evidence given at the bar, which made the validity of it suspected.

2dly, And because it is without precedent, that a bill of this nature was ever brought into parliament, where the subject-matter had not been first proceeded on in the ecclesiastical courts; and that it may be of dangerous consequence to the settlements of families, to subject the dissolution of marriages to so short and summary a way of proceeding.

Burlington,	Weymouth,	Bolton,
Rochester,	Vaughan,	Tho. Roffen,
N. Cestriens,	Ja. Lincolne,	Sy. Eliensis,
Lempster,	Halifax,	Scarsdale,
Jonat. Exon,	Suffex,	Thanet,
H. London,	Jeffreys,	North and Grey.
Montague,		

*Die Jovis, 4<sup>o</sup> Aprilis, 1700.*

The order being read for resuming the debate adjourned yesterday, upon the bill, intituled, An act for granting an aid to his Majesty by sale of forfeited estates and interests in Ireland, and by a land-tax in England, for the several purposes therein mentioned,

And debate thereupon,

Contents 70 The question was put, whether this  
 Not Cont. 23 bill shall be read a second time?

It was resolved in the affirmative.

Dissentient,

Though there be nothing we more earnestly desire, and shall on all occasions, to the utmost of our power, more sincerely and heartily endeavour, than the preservation of a constant right and good understanding and agreement between the two Houses

Houses of Parliament, as that on which the safety, welfare and happiness of the nation, and the preservation of the wisest and noblest constitution in the world, does so much depend; yet we cannot but enter this our protestation against a second reading of this bill.

1st, Because, as we conceive, this bill does, in one part, tend very much to the alteration (if not to the destruction) of that constitution which, we believe, the supply in the other part was given to preserve.

2dly, Because, we conceive, the tacking so many and different matters to a money bill is not only contrary to all the rules and methods of parliament, but highly dangerous both to the undoubted prerogative of the crown, and right of this House, putting it, as we conceive, in the power of the Commons to make any resolutions of their own as necessary, as any supply given for the support or emergencies of state.

3dly, We know not how far the just right any private subject has to his estate may be endangered by the precedent of such a bill; for if the titles so many persons have to their estates may be determined by the Commons in a money bill without either oath or appeal, as, we conceive, in this bill they are, we cannot apprehend, how any single private subject, or minister of state, can, for the future, be safe; which must needs be a weakening the prince's hands, and the legal security every man now has to his estate.

Richmond, Stamford, Bergevenny,  
Haversham, Bolton, Anglesey,  
Mohun, Audley,

*Die Mercurii, 10<sup>o</sup> Aprilis, 1700.*

A free conference having been had with the Commons, upon the subject-matter of the amendments



ments made by the Lords to the bill for granting an aid to his Majesty by sale of the forfeited estates and interests in Ireland, and by a land-tax in England, for the several purposes therein mentioned; and report made that the Commons had used no reasons at the said free conference, but said, they had orders to return the bill, and leave it with the Lords,

Contents	40	} 43	After debate, the question was put, whether this House will adhere to their amendments made to this bill?
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It was resolved in the negative.

Contents	39	} 43	Then the question was put, whether this House will agree to the said bill without any amendment?
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It was resolved in the affirmative.

We do dissent for the reasons given this day to the Commons at a conference, which reasons are as follows:

1st, Because the reasons given by the Commons against their Lordships amendments do no way relate to the matter contained in the said amendments.

2dly, Because though there be nothing in the said amendments relating to aids and supplies granted to his Majesty in parliament, yet the Commons have thought fit to take occasion thereupon to assert a claim to their sole and entire right, not only the granting all aids in parliament, but that such aids are to be raised by such methods, and with such provisions as the Commons only think proper: if the said assertions were exactly true (which their Lordships cannot allow) yet it could not, with good reason, follow from thence, that the Lords may not alter, or leave out, according to their amendments, when the saving estates of innocent persons, and of such as have been outlawed

lawed after their death, makes such amendments necessary.

3dly, And the Lords think it unreasonable and unjust to vest in the trustees any greater, or other estate, than was in the forfeiting person, or than the King may legally have; since thereby not only many innocent persons, who come in by descent or purchase, or other valuable considerations, might suffer equally as criminals, but 'tis possible, that men, who, with the utmost hazard of their lives, have been defending the government, may forfeit as traitors: and they cannot apprehend, that by any law of this land, or by any rule of reason or justice, any person ought to be outlawed after his death, since 'tis condemning a man unheard, and allowing him no opportunity of making his innocence appear.

4thly, The Lords admit the resumption of the forfeited estates in Ireland to be a thing necessary, by reason of the great debt due to the army and others, which they earnestly desire to see discharged, and are therefore very willing and desirous to give their consents to any reasonable bill the Commons shall send them up to that purpose: but the Lords can by no means consent, that the Commons shall take upon them to dispose of any of the said forfeitures to any private persons, it being the sole and undoubted right of the crown to be the distributor of all bounties, and being contrary to all the laws and course of parliaments, to give aids, supplies, or grants, to any but the King only; and as the contrary practice is totally new and unprecedented, so, in process of time, it may become of the last ill consequence to the public.

5thly, The Lords cannot agree to the clauses that create an incapacity in the commissioners or managers of the excise for sitting in this parliament,



ment, because the qualification of members to serve in parliament is a thing (if proper to be meddled with at all) that hath been thought fit by the Commons to be in a bill, by itself; and the joining together, in a money bill, things so totally foreign to the methods of raising money, and to the quantity or qualification of the sums to be raised, is wholly destructive of the freedom of debates, dangerous to the privileges of the Lords, and to the prerogative of the crown: for by this means things of the last ill consequence to the nation may be brought into money bills, and yet neither the Lords, nor the crown, be able to give their negative to them, without hazarding the public peace and security: and it seems a great hardship to the counties and places, who chuse such members, to deprive them of their services, since they knew them to be commissioners of excise at the time they chose them, and since the Commons admit them to be proper persons to serve either in excise or parliament, tho' not at the same time; so that there seems to be no other reason of distinguishing these commissioners but what is common to all other officers of the crown; and the question, whether such an alteration may be convenient, must needs be a doubt with the Lords, since the Commons have not been able this very session to satisfy themselves with the bill, and the considerations they have entertained upon that subject: the Lords do seriously consider the dangers and inconveniencies that are likely to happen by the loss of this bill, and by the difference betwixt the two Houses, and are heartily sorry for them, and desirous to avoid them by all the means they can; as does manifestly appear by having complied and over-looked the irregularities of bills of the like nature, and, at the same time, by entering in their books, to be seen by every-body,

their

their just sense of the wrong, and their resolutions of asserting that fundamental right, of the exercise of which there are many precedents extant in their books: but since they find, that such their kind intentions of maintaining a good correspondence with the Commons has had no other effect but to introduce greater impositions upon them, and such as will certainly prove destructive to the ancient and excellent constitution of our government, since the Lords have no objection to the resumption, nor no design to invade the least right of the Commons, but only to defend their own, that they may transmit the government and their own rights and privileges to their posterity, in the same state and condition that they were derived down to them from their ancestors; they think themselves wholly discharged from being in the least accessary to any such dangers or inconveniencies, and conceive they are sufficiently justified before God and man, notwithstanding such innovations and invasions upon our constitution and our laws as must necessarily prove the destruction of them.

Norfolke, E.M.	J. Bridgewater,	Stamford,
Mohun,	Culpeper,	Audley,
Haverham,	Howard,	Herbert,
Say and Seal,	Southampton,	Richmond,
Anglesey,	Sandwich,	Pembroke,
R. Ferrers,	Lonsdale, C.P.S.	Bolton,
Raby,	Bergevenny,	North & Grey.

*Die Lunæ, 3<sup>o</sup> Martii, 1700.*

An account was given to the House by certain Lords appointed to visit the countess of Anglesey, in order to persuade her to return to her husband, of her reasons for her refusal; and after hearing the earl of Anglesey, and reading the countess's petition, and debate thereupon,

The



The question was put, whether the countess of Anglesey shall have leave to bring in a bill for a separation for cruelty, as is prayed for in her petition?

It was resolved in the affirmative.

**Dissentient**,

1st, The leave for this bill is founded upon the supposition of an utter impossibility of a reconciliation between my lord Anglesey and the countess; which supposition (with submission) seeming to me very precarious, though it may be the consequence of such a bill, cannot, to me, be the reason for it.

2dly, Marriage being looked upon in the church of Rome as a sacrament always and in all cases indissoluble, but by the pretended authority of the infallible vicar; and there being, in some cases, an absolute necessity for a divorce, the Roman courts of judicature, fearing to expose the weakness of the infallibility, contrived this trick of a separate maintenance; which practice of theirs, I humbly conceive, such a bill would give too much countenance to.

3dly, A perpetual separate maintenance, as seems intended by such a bill, is a much heavier judgment upon the earl of Anglesey than divorce itself, it having all the nature of a punishment to my lord Anglesey, and nothing of ease; and is directly contrary to the very appointment and design of marriage, posterity and society being destroyed, and the public injured thereby.

4thly, No judgment in this matter (as I humbly conceive) ought to be made, or when made can be valid, but what is expressly allowed of by the evangelick law, which law, to me, seems no where to permit of such a perpetual separation, without an absolute divorce.

5thly, Though it cannot be doubted, but in the course of so many ages, as great domestic differences

ferences have happened between men and their wives as in the present case, yet no precedent has as yet been produced, as I know of, of any bill of the like nature.

*Haversham.*

*Die Sabbati, 8<sup>o</sup> Martii, 1700.*

After reading captain John Norris's petition of the 7th instant, as also his Instructions from the admiralty, and some councils of war on board at Newfoundland, and long debate upon the whole matter,

The question was put, whether the said captain, having lain near two years under a suspension upon an address from this house to his Majesty, that an address shall be made to his Majesty to take off the said suspension he lieth under?

It was resolved in the affirmative.

Dissentient,

For that captain Norris having been accused by many witnesses, upon oath, of great neglect of his duty, in not attacking monsieur Ponty's ships in Conception Bay, notwithstanding the intelligence given of them to him by captain Desborow, Cumberbatch, and several prisoners, and that pestering his ship with prize-goods, which he had embezzled; and thereupon this House having made an address to his Majesty, to order captain Norris to attend this House, to answer such matters as had been objected against him, and that in the mean time he should be suspended from his employment, which his Majesty has been pleased to order; and accordingly captain Norris having appeared before us, but the matters not having been fully examined by hearing at this time the witnesses either against him, or for him, we conceive it very improper to make  
O any



any such address in his favour, he being, for all that yet appears to us, guilty of the matters charged upon him; and we are the more convinced of this, because the motion made of remitting captain Norris to a trial, by a council of war, was not accepted; and besides the unreasonableness of passing any sentence of acquitting a man accused, upon oath, without a full hearing of the cause, we think it also of very dangerous consequence, that, in this conjuncture especially, a man should be capable of being employed in so important a station as in the fleet, who lies under the heavy charge of embezzling prizes, and pestering his ship with them, and of failing to attempt a service which would have been of vast advantage to us, and prejudice to our enemies.

Willoughby,	Howard,	Jeffreys,
Leeds,	Normanby,	Poulett,
Nottingham,	Torrington,	Oxford,
Thanet,	Weymouth,	Granville.

*Die Sabbati, 15<sup>o</sup> Martii, 1700.*

The Earl of Nottingham reported from the committee appointed to draw up and state the facts, as to the treaty of partition, that they had thought proper to set down such facts as appeared to them.

And the second Head being read, *viz.*

That the Emperor was not a party to this treaty, though principally concerned,

Contents 24 The question was put, whether this  
Not Cont. 40 paragraph shall stand?

It was resolved in the negative.

Dissentient,

1<sup>st</sup>. Because it is manifest by the treaty itself, that the matter of fact is true.

2<sup>dly</sup>,

2dly, Because the Emperor, as we conceive, had been the most proper to have treated with on this occasion, for it was more prudent and safe to have treated with the Emperor to have restrained the pretensions of France, than with France to lessen the dominions of the House of Austria, which in its full strength, and in conjunction with the most considerable powers in Europe, and with the expence of more than sixty millions sterling, to our share, was scarce able to withstand the arms of France.

3dly, But admitting that the Emperor was not the most proper to be treated with, yet to prevent the umbrage that might be taken by uniting too many dominions under one Prince, especially such a Prince as, without any additions, was formidable to all Europe, yet of all others the Emperor was the most improper to be left out of such a treaty, for he was most concerned in it; and our ministers could not, or at least did not, sufficiently support his interests, or the just ballance of Europe; but, on the contrary, as we are informed by one lord who signed the treaty, it was concluded against the express desire of the Emperor.

De Longueville,	Granville,	Abingdon,
Howard,	Scarsdale,	Normanby,
Thanet,	Jeffreys,	Guilford,
Craven,	Leeds,	Nottingham,
Hereford,	Weymouth,	Poulett.

Tho. Roffen,

Then the third Head was read, viz,

That no minister of the States General met with the plenipotentiaries of England and France, as were required by the powers at the making the treaty in London.

The question was put, whether this paragraph shall stand?

It was resolved in the negative.



Dissentient,

1st. Because the truth of this proposition is reason enough for asserting it, and it must certainly be of fatal consequence, if ministers, without any directions by instructions in writing, shall presume to act contrary to the very commission that impowers them; and, in this case, the assistance of the Dutch ministers was the more necessary, because the Emperor was no party to this treaty, and the States General are more immediately concerned, than we are, to promote his interests.

2dly, But if this treaty was concerted with the Dutch ministers in one thousand six hundred ninety-nine, before his Majesty's return into England, as was asserted by one of the Lords who signed it afterwards in London, then,

1. This treaty was made by those who had no authority to transact it, for the power was not granted by his Majesty till the 2d of January following.

2. As they acted without power, so without instructions too in writing, which never was practised in any former transactions abroad.

Lastly, We conceive, that neither of the foregoing facts ought, in reason, or according to the method of parliament, to be ordered to be omitted, because, till the committee had formed the address, pursuant to the order, 'twas impossible to know what use would be made of those facts; for as they might have been improperly applied, and then would have been justly rejected, so there might have been so great use made of them, and so apposite to the design of the House, in the intended address, that 'twill be improper to omit them.

Thanet, Tho. Roffen', De Longueville,  
Leeds, Hereford, Granville,

Craven,

Craven,	Howard,	Abingdon,
Weymouth,	Jeffreys,	Nottingham.
Normanby,		

*Die Martis, 18<sup>o</sup> Martii, 1700.*

After debate concerning the treaty of partition, it was proposed, that it appears, that the French King's acceptance of the will of the King of Spain is a manifest violation of the treaty, and humbly to advise the King, that, in all future treaties with the French King, his Majesty do proceed with such caution as may carry along with it a real security.

After debate thereupon,

This Question was put, whether the said proposal shall go to the committee to be one of the heads for the address?

It was resolved in the affirmative.

Dissentient,

1st, Because it must be construed to be an approbation of the treaty, which (as we conceive) was not intended by the House.

2dly, Because it is impossible to know the full meaning and extent of real security.

Nottingham,	Rocheſter,	Guilford,
Granville,	Weymouth,	Godolphin.
Normanby,	Abingdon,	

*Die Jovis, 20<sup>o</sup> Martii, 1700.*

An address to his Majesty touching the treaty of partition was reported and agreed to.

And the question being put, whether this address shall be communicated to the House of Commons for their concurrence?

It was resolved in the negative.



Dissentient'.

1st, Because, we conceive that the last clause in the address does necessarily imply a war, and that a very long one, by reason of the extent, unintelligible at least to us, of a real security, and the greatest improbability of obtaining any terms of that kind; and since this necessarily implies great supplies, which cannot be granted without the House of Commons, we think their concurrence, in this advice, absolutely necessary, and that it is very improper for us to desire that of the King, which, for want of such concurrence of the Commons, we conceive, his Majesty will not think fit or prudent for him to grant.

2dly, We conceive all the other parts of the address very fit to be communicated to the House of Commons, for upon the success of it depends the future happiness of this nation; and as we cannot doubt of the readiness of the Commons to join in any proper measures towards it, so we think their concurrence in it would highly contribute towards the obtaining a gracious answer from his Majesty; and we cannot but think it reasonable that the advice of the whole nation, assembled in Parliament, should be made known to his Majesty upon this occasion.

3dly, Having desired the House of Commons to permit Mr. Secretary Vernon, a member of their House, to come to a committee of Lords to inform them of some matters relating to this treaty; we apprehend, that the House of Commons may think it extraordinary, and not suitable to the good correspondence which is highly necessary between the two Houses, not to acquaint them with the things which have come to our knowledge, partly by the information of their own member.

4thly, And having been otherwise informed of some transactions relating to this treaty between  
the

the earl of Portland and Mr. Secretary Vernon by Letters, of which we have not had a full account, we think it may be very useful to the public to communicate this address to the Commons, who have better opportunity than we have had of enquiring into this matter, which seems to be yet in the dark, and which their own member may help to explain to them.

Leeds,	Bathe,	H. London,
De Longueville,	Abingdon,	Normanby,
Weymouth,	Craven,	Hunfdon,
Jeffreys,	Willoughby,	Thanet,
Guilford,	Kent,	N. Duresme,
Tho. Roffen',	Carnarvon,	Scarsdale,
Poulett,	Nottingham,	Granville.

*Die Mercurii, 16<sup>o</sup> Aprilis, 1701.*

The House being moved, that an address be made to his Majesty, that he will be pleased to pass no censure or punishment against the four noble Lords who stand impeached of high crimes and misdemeanors, until the impeachments depending against them in this House shall be tried. Contents 49 After debate, the question was put Not Cont. 29 thereupon?

And it was resolved in the affirmative.

Dissentient',

1st, Because, we conceive, it is contrary to the method of proceeding in parliament, to take notice in this House of what is represented only, by some Lords, to have passed in the other.

2dly, And it is not proper to address the King on a subject that is not before this House to judge of, which may engage this House in what is indecent towards his Majesty, and may be of ill consequence between the two Houses.



Scarfsdale,	Carnarvon,	Ormonde,
Normanby,	Thanet,	Kent,
Townshend,	Weymouth,	Rochester,
Abingdon,	Ashburnham,	Howard,
Jonat. Exon',	Hereford,	Poulett,
Lexington,	Granville,	Weston,
H. London,	Guilford,	Jeffreys,
Sandwich,	Willoughby,	Dartmouth.
Cholmondeley,		

Exception being taken to the before-mentioned protestation,

The protestation was read. And after debate,

Contents 22

Not Cont. 28

The question was put, whether the first reason in the protestation shall stand?

It was resolved in the negative.

Then the second reason in the protestation was read. After debate,

The question was put, whether the second reason in the protestation shall stand?

It was resolved in the negative.

The foregoing reasons were ordered to be expunged, but the above may be depended upon as a genuine copy.

Dissentient',

Because it is the privilege of the Peers to enter their dissent, and it has been the ancient practice to enter also their reasons of such dissent, of which the Lords that so protest are the most proper judges, as well knowing what arguments persuaded them to be of that opinion; and no reasons can be more proper than such as they conceive are founded upon matter of fact.

Sandwich,	Howard,	Jonat. Exon',
Carnarvon,	Granville,	Willoughby,
Feversham,	Poulett,	Ormond,
Rochester,	Lexington,	Normanby,
Weymouth,	H. London,	Thanet,

Scarfsdale.

Scarsdale, Dartmouth, Guilford,  
 Townshend, Weston, Jeffreys.  
 Abingdon,

*Die Martis, 3<sup>o</sup> Junii, 1701.*

Report was made of an answer, drawn by a committee, to be sent to the House of Commons, to their message received the 31<sup>st</sup> of May last, relating to the impeachments now depending against the four Lords.

And the first paragraph being read, was agreed to.

Then the second paragraph was read as follows, viz.

(And as the Lords do not controvert what right the Commons may have of impeaching in general terms, if they please, so the Lords, in whom the judicature does entirely reside, think themselves obliged to assert, that the right of determining what is a due Time, in which the particular articles of impeachment ought to be exhibited, is lodged in them only.)

It being proposed that an amendment be made in this paragraph, that instead of the words, viz. (determined what is a due time in which the particular articles of impeachment ought to be exhibited, is lodged in them only) these words may be inserted, (limiting a convenient time for bringing the particular charge before them for avoiding delay in justice, is lodged in them.)

Contents 43 After debate, the question was  
 Not Cont. 27 put, whether the second paragraph so amended shall stand?

It was resolved in the affirmative.

Dissentient,

Because, we conceive, this assertion is new.

Norman-



Normanby,	Nottingham,	Marlborough,
Oxford,	H. London,	Tho. Roffen',
Jonat. Exon',	Lexington,	Rocheſter,
Weymouth,	Plymouth,	Granville,
Jeffreys,	Guilford,	Cholmondeley,
Lindſey,	Lawarr,	Dartmouth,
Howard,	Hunſdon,	Godolphin.

Then the laſt paragraph was read as follows,  
viz.

(The Lords hope the Commons, on their part, will be as careful not to do any thing that may tend to the interruption of the good correſpondence between the Houſes, as the Lords ſhall ever be on their part; and the beſt way to preſerve that, is for neither of the two Houſes to exceed thoſe limits which the law and cuſtom of parliaments have already eſtabliſhed.)

And after debate, the queſtion was put, whether the laſt paragraph ſhall ſtand?

It was reſolved in the affirmative.

Different',

Be cauſe we know not that the law and cuſtom of parliaments have eſtabliſhed any certain limits.

Normanby,	Nottingham,	Marlborough,
H. London,	Tho. Roffen',	Jonat. Exon',
Rocheſter,	Abingdon,	Weymouth,
Oxford,	Granville,	Jeffreys,
Guilford,	Lexington,	Lindſey,
Howard,	Plymouth,	Lawarr,
Dartmouth,	Hunſdon,	Dodolphin.
Cholmondeley,		

*Die Luna, 9<sup>o</sup> Junii, 1701.*

It being moved to have a conference with the Commons to let them know, that the Lords do not agree to a committee of both Houſes in relation to the trials of the impeached Lords; after debate thereupon,

This

This Question was put, whether a committee of this House shall be appointed to meet with a committee of the House of Commons, in relation to the proceedings upon the impeachments ?

It was resolved in the negative.

Dissentient,

Because the Lords, in the year one thousand six hundred seventy-nine, consented to a committee of Lords and Commons, for regulating the trials of the popish Lords ; and therefore the refusing to comply with the Commons in the same request at this time will be (in our opinion) a great obstacle to the trials of the impeached Lords.

Somerset,	Peterborow,	Howard,
Derby,	Dartmouth,	Weymouth,
Normanby,	Rocheſter,	Torrington,
Denbigh,	Guilford,	Marlborough,
Lawarr,	Carnarvon,	Abingdon,
Jonat. Exon',	Lexington,	H. London,
Oxford,	Nottingham,	Godolphin.

*Die Mercurii, 11<sup>o</sup> Junii, 1701.*

The meſſage received yeſterday from the Houſe of Commons, was read ; and after debate of the ſeveral particulars contained in it,

This queſtion was propoſed, that no Lord of parliament, impeached of high crimes and miſdemeanors, and coming to his trial, ſhall, upon his trial, be without the bar.

Then the previous queſtion was put, whether this Queſtion ſhall be now put ?

It was reſolved in the affirmative.

Dissentient,

Because however reaſonable this propoſition may appear to us, yet we conceive it very improper to determine it, before we have heard what the Commons can ſay upon it.

Not-



Nottingham,	Weymouth,	H. London,
Jonat. Exon',	Tho. Roffen',	Rochester,
Abingdon,	Guilford,	Torrington.

*Die Sabbati, 14° Junii, 1701.*

A message was sent to the House of Commons by Sir John Hoskins and Dr. Newton, to acquaint them, that upon the occasion of their last message yesterday, in order to continue a good correspondence between the two Houses, their Lordships did immediately appoint a committee to state the matter of the free conference, and also to inspect precedents of what has happened of the like nature; and that the publick business may receive no interruption, the time desired by their Lordships for renewing the free conference being elapsed, their Lordships desire a present free conference in the Painted Chamber upon the subject-matter of the last free conference.

*Dissentient',*

We conceive it to be improper, and not agreeable to the methods of parliament, to send for a second free conference before the first is determined, or that there is a vote of the House passed for insisting.

Denbigh,	Lawarr,	H. London,
Weymouth,	Abingdon,	Jonat. Exon',
Carnarvon,	Peterborow,	Tho. Roffen'.
Dartmouth,		

The House being moved to insist not to have a committee of both Houses touching the trials of the impeached Lords.

After debate thereupon, the question was put, whether this House shall insist upon their resolution of not allowing a committee of both Houses?

It was resolved in the affirmative.

*Dissen-*

Dissentient',

We conceive it to be improper, and not agreeable to the methods of parliament, to pass a vote for insisting, before the first free conference is determined; or if it be determined, as we conceive it is not, the vote for insisting should have preceded the message for a second free conference.

Abingdon,	Thanet,	Dartmouth,
Weymouth,	Lawarr,	Nottingham,
Carnarvon,	Peterborow,	H. London.
Jonat. Exon',		

*Die Sabbati, 21<sup>o</sup> Junii, 1701.*

The answer of John Lord Haversham, to the charge sent up against him by the Commons, having been sent down to that House.

It was proposed to resolve, that unless the said charge shall be prosecuted against the said Lord Haversham, with effect, by the Commons, before the end of this session of parliament, the Lords will declare and adjudge him wholly innocent of the said charge.

The question was put, whether such a resolution shall be agreed to?

It was resolved in the affirmative.

Dissentient',

1st, Because the justice of our judgment of acquitting the Lord Somers depending on our right to name a peremptory day, I do conceive that by this vote that right is violated, the Commons being by it allowed to declare when they are ready to prosecute, before any day is by us named.

2dly, Because having thought fit to name a day for the impeachment of the Lord Somers, to be consistent to ourselves, we ought to pursue the same methods: nor does this, being a charge only, alter the case; for what is done in matters of greater



greater moment may safely be pursued in cases of less concern.

3dly, Because to me, there does not seem any need of farther prosecution on the Commons part in this matter, the fact and the nature of it being both fully before us :

North and Grey.

*Die Lune, 23<sup>o</sup> Junii, 1701.*

The House resumed the adjourned debate upon the printed votes of the House of Commons of the twentieth instant.

And 'twas resolved, upon the question, that whatever ill consequences may arise, from the so long deferring the supplies for this year's service, they are to be attributed to the fatal counsel of putting off the meeting of a parliament so long, and to the unnecessary delays of the House of Commons. Dissentient,

Because tho', I humbly conceive, it is evident to all Englishmen, that nothing could be more fatal to the interest of Europe, to the interest of the protestant religion, and the safety of England, than the so long delay of the meeting of a parliament after the death of the King of Spain, yet I cannot agree to the latter part of this vote, which lays imputations of unnecessary delays to this House of Commons.

Peterborough.

*Die Veneris, 20<sup>o</sup> Februarii, 1701.*

*Hodie 3<sup>a</sup> vice lecta est billa*, intituled, An act to attain Mary, late wife of the late King James, of high treason.

Contents 18  
Not Cont. 28

The question was put, whether this bill shall pass ?

It was resolved in the affirmative.  
Because

Because there was no proof of the allegations in the bill so much as offered, before the passing of it, which is a precedent that may be of dangerous consequence.

Winchelsea,	Weymouth,	Dartmouth,
North and Grey,	Feverham,	Stawell,
Bradford,	Jeffreys,	De Longueville,
Craven,	Plymouth,	Northampton,
Guilford,	Scarfdale,	H. London.

*Die Martis, 24<sup>o</sup> Februarii, 1701.*

*Hodie 3<sup>a</sup> vice lecta est billa*, intituled, An act for the further security of his Majesty's person, and the succession of the crown in the protestant line, and for extinguishing the hopes of the pretended prince of Wales, and all other pretenders, and their open and secret abettors.

After debate, the question was put, whether this bill, with the amendments, shall pass?

It was resolved in the affirmative.

Dissentient,

1st, We conceive that no new oath should be imposed upon the subject, forasmuch as those established by an act made in the first year of the reign of his Majesty and the late Queen Mary were, together with our rights and liberties, ascertained in that act under the terms of our submission to his Majesty, and upon which his Majesty was pleased to accept the crown; and which were enacted to stand, remain, and be the law of this realm for ever; and which, we conceive, do comprehend and necessarily imply all the duty and allegiance of the subject to their lawful King.

2dly, And much less should any new oath be imposed upon the Lords, with such a penalty as to lose their seats in parliament, upon their refusing it;



it; such a penalty being, in some measure, an intrenchment upon our constitution, and expressly contrary to the standing order of this House made the 30th day of April, 1675.

3dly, And if such an infringement of the rights of peers might be admitted, yet in a matter of so great importance to all the peers, we conceive, that in justice they should all have had notice of this matter, and specially summoned to have attended the House upon so great an occasion; which has not been done, tho' it was moved and humbly desired on behalf of the absent lords.

4thly, And if any further evidence of the subjects fidelity were, at this time, necessary to be required, we conceive a new oath is no such evidence, nor any additional security to the government; because those who have kept the oaths, which they have already taken, ought in justice to be esteemed good subjects; and those, who have broken them, will make no scruple of taking or breaking any others that shall be required of them: and consequently this new oath may be of dangerous and pernicious consequence to the government, by admitting such ill men, who do not fear an oath, into the greatest trusts, and who, under the specious pretence and protection of this new oath, which is to free them from suspicion, will have greater opportunities of betraying their King and their country.

5thly, If a new oath were necessary, as we conceive it is not, yet the words of this oath are so very ambiguous, and have been so very differently construed by several lords who have declared their sense of them, that this may become a snare to mens consciences, or tend to overthrow the obligation of an oath, by allowing men liberty to take it in their own sense; whereas this, as all other oaths, ought to be taken in the sense of the imposer,  
which

which hath not been declared in this case, though we earnestly pressed it, and though it has been done in other cases of the like nature.

6thly, And, we conceive, that it necessarily follows from hence, that this oath can be no bond of union among those who do take it, nor any true mark of distinction between the friends and the enemies of this government; and therefore repugnant to the very nature of a Test.

Winchelsea, Weymouth, Scarsdale,  
Denbigh, Plymouth, Stawell,  
Guilford, Nottingham, Jeffreys.  
Craven,

The first reason of the above protest, though ordered to be expunged, may be depended upon as a genuine copy.

*Die Martis, 19<sup>o</sup> Januarii, 1702.*

Upon report from the committee of the whole House, on the bill to enable her Majesty to settle a revenue upon the prince of Denmark, in case he survived her, That they had gone through the bill, and left out one clause which enacted, that in case of the prince's surviving, he might be capable to be of the Privy Council, a member of this House, to enjoy any office, the grants herein mentioned, or any other, notwithstanding the act of succession in the 12th of the late King.

And the question being put, whether to agree with the committee in leaving out this clause?

It was resolved in the negative.

Dissentient,

1st, We do dissent from this clause, because, we conceive, this is a bill of aid and supply; and that this clause is altogether foreign to, and different from, the matter of the said bill; and that the passing of such clause is therefore unparliamentary,



mentary, and tends to the destruction of the constitution of this government.

2dly, Because, we conceive, that a parliamentary expedient might have been found, whereby his royal highness might, by an unanimous consent, have all the advantages designed him by this bill, without the Lords being obliged to depart from what we conceive to be their undoubted right.

3dly, Because, we conceive, that this clause was not necessary to enable his royal highness to enjoy the benefit of the said grants.

4thly, Because that this clause, which pretends to capacitate his royal highness to enjoy his peerage, notwithstanding the act for the further limitation of the crown, and better securing the rights and liberties of the subject, and which makes no provision for other peers under the same circumstances, we conceive, may tend much to their prejudice.

Torrington, Portland, Jo. Litch. and Coven.  
Say and Seale, Manchester, Offulstone.  
Sommers, Kingston,

We dissent from the clauses relating to the grants.

1st, Because the said grants are not laid before the House (though desired) by which we are ignorant upon what consideration the same were granted.

2dly, Because, we conceive, that the saving clauses are so far from having any relation to his royal highness, that if they signify any thing (without any respect to him) they prefer their payment before his.

Somerfet,	Bolton,	Say and Seale,
Devonshire,	Mohun,	W. Worcester,
Tho. Cantuar',	Bergevenny,	Ri. Petriburg',
Huntingdon,	Berkeley of Stratt.	Gi. Sarum,
Oxford,	Jo. Litch. & Cov.	Rivers,
		Lovelace,

Lovelace,	Jo. Chichester,	Essex,
Townshend,	Jo. Bangor,	Poulett,
Herbert,	Sunderland,	Rockingham,
Carlisle E. M.	Tho. Wharton,	Stamford.
Radnor,		

*Die Veneris, 22<sup>o</sup> Januarii, 1702.*

After hearing counsel upon the petition of Robert Squire, Esq; and John Thompson, in relation to an appeal of the right honourable Thomas lord Wharton, and the answer of his lordship to the said petition; and debate thereupon,

The question was put, whether the petition of Robert Squire and John Thompson shall be dismissed, and they ordered to answer the said appeal?

It was resolved in the affirmative.  
Dissentient,

First, Because, we conceive, that by this, we assume a jurisdiction in an original cause, for these reasons:

1<sup>st</sup>, Because, there has been no suit between the parties in the Exchequer, and consequently this petition cannot be called an appeal from that court.

2<sup>dly</sup>, Although there was a suit in the court of Chancery, yet one of the persons required to answer was not a party in that suit; and therefore, as to him, at least it must be an original cause.

3<sup>dly</sup>, Though all had been parties in the Chancery, yet it never was heard, that an appeal lay from one court that had no suit depending in it, because there was a suit depending in another court.

Secondly, Because no court can take any cognizance of a cause, in which that court cannot make an order; but in this case, the House of Lords cannot make an order, because, very many are concerned in this record, who are not before this



House; therefore this House cannot take any cognizance of it.

Leeds,	Weymouth,	Rocheſter,
Townſhend,	N. Dureſme,	Dartmouth,
Nottingham,	Tho. Roſſen,	Jonat. Exon,
W. Carliol,	Poulett,	

*Die Lune, 22<sup>o</sup> Februarii, 1702.*

*Hodie 2<sup>a</sup> vice lecta eſt billa,* intituled, An act for providing, that no perſons ſhall be choſe members of the Houſe of Commons but ſuch as have ſufficient real eſtates.

Then a debate ariſing, whether this bill ſhall be committed,

Contents	34	} 41	The queſtion was put, whether this bill ſhall be committed?
Proxies	7		
Not Cont.	36	} 46	It was reſolved in the ne- gative.
Proxies	10		

*Different,*

Because the deſign of that bill was for hindering of foreigners, and men of little or no eſtate, from being capable of taxing and diſpoſing of the rights and eſtates of all England, and might have received any reaſonable alterations at a committee, which ſhould have been judged convenient.

De Longueville,	Scarſdale,	Townſhend,
Cholmondeley,	Warrington,	Normanby, C.P.S.
Weymouth,	Lindſey, G.C.	Denbigh,
Stawell,	Dartmouth,	Kent,
Plymouth,	Lempſter,	Poulett,
Sandwich,	Barnard,	Abingdon.
Carnarvon,	Nottingham,	

*Die Mercurii, 24<sup>o</sup> Februarii, 1702.*

A long report was made from the committee appointed to draw up what was offered at the free conference, upon the bill for preventing occaſional conformity.

And

And it being proposed to print this report, and the said bill, with the amendments made by the Lords, and their proceedings thereupon,

The question was put, whether the bill intituled,

An act for preventing occasional conformity, and the amendments made by the Lords to the said bill, and their reasons for those amendments: and the Commons reasons, and the report of the free conference thereupon, shall be printed and published?

It was resolved in the affirmative.

Dissentient,

Because the printing of bills, and the proceedings on bills, was never done, and therefore is unparliamentary.

'Tis an appealing to the people, and giving them a pretence of right to examine and judge of the parliament, which otherwise would be unlawful, and this practice may be of pernicious consequence to the peace of the kingdom, and highly derogatory to the honour and dignity of the House of Lords.

Lindsey, G. C.    Sandwich,    Denbigh,  
Nottingham,    Dartmouth,    Weymouth.

*Die Martis, 21<sup>o</sup> Martii, 1703.*

*Hodie 3<sup>a</sup> vice lecta est billa,* intituled, An act for raising recruits for the land forces and marines, and for dispensing with part of the act for the encouragement and increase of shipping and navigation, during the present war.

The question was put, whether this bill shall pass?

It was resolved in the affirmative.

Dissentient,

Because there is in this bill the following clause, viz. [That it shall and may be lawful for the justices of the peace of every county and riding



within this realm, or any three or more of them, to raise and levy such able-bodied men, as have not any lawful calling or employment, or visible means for their maintenance or livelihood, to serve as soldiers, for the purposes in the bill mentioned.]

Dartmouth, Haversham, Thanet,  
 Anglesey, Nottingham, Rochester,  
 Gower, H. London, Conway,  
 Torrington, Guilford, Geo. Bath and Wells,  
 Lempster, Crewe, Abingdon,  
 Stawell, Granville, Poulett.  
 Guernsey,

*Die Veneris, 24<sup>o</sup> Martii, 1703.*

After debate upon the first narrative, made by Sir John Maclean, to the earl of Nottingham, and several questions proposed relating thereto,

This question was stated, *viz.* That that part of the narrative relating to Sir John Maclean, and the papers relating to his examination, taken by the earl of Nottingham, and laid before the Queen, the Cabinet-council, and this House, are imperfect. Then,

The previous question was put,  
 Contents 30 whether this question shall be  
 NotCont. 41 now put?

It was resolved in the negative.

*Dissentient<sup>s</sup>,*

Because the main question seems to us to be the lightest censure that can be passed on the account of Sir John Maclean's discovery laid before the Queen, the Cabinet-council, and this House, by the earl of Nottingham, which we conceive is very defective, as well in the substance of it, as in the form and manner in which it was taken: it is not writ by his own hand, nor so much as signed by him.

There

There is no mention made of what questions were put to him, or of his answers thereunto.

There is no notice taken of his negociations with the ministers of the court of St. Germans, who were all acquainted with this conspiracy, as Sir John Maclean has given in under his own hand-writing to the Lords Committees, which he acquainted them he had told to the earl of Nottingham.

This omission is of the greatest consequence, in our opinion, because the papers given in by Ferguson and Lindsay, seem contrived to make it believed, that the court of St. Germans have no design to disturb her Majesty's government during her reign, and that the earl of Middleton does all he can to prevent conspiracies or designs against her.

Sir John Maclean also informed the Lords Committees of the correspondence intended to be carried on between him and the earl of Perth; as also of the correspondence to be settled by Frazier and Murray, of which he was to be informed by Robert Murray, and which he told the Lords of the Committee, he had acquainted the earl of Nottingham of; and yet there is no notice taken of it in the said account laid before the House.

It being moved by some Lords that were against the main question, that Sir John Maclean should be sent for to the bar, and be heard as to the particulars objected to the said account, and seconded and agreed to by other Lords that were for the question, that he should be brought to clear the matter.

The motion for sending for him was waved, and the previous question insisted upon.

Somerfet,	Oxford,	Bolton,
Torrington,	Carlisle, E. M.	Mohun,
Scarborough,	Rivers,	Manchester,
Sommers,	Derby,	Halifax,



Gi. Sarum,	R. Grey,	Rockingham,
Stamford,	Herbert,	T. Wharton,
Bergevenny,	Effex,	Richmond.
Sunderland,		

*Die Martis, 17<sup>o</sup> Januarii, 1704.*

A bill intituled, An act to enable William Henry earl of Bath, during his minority, to execute the power of making leases of his settled estate, being offered to be read; and a debate arising thereon,

Contents 46	After debate, the question was put,
Not Cont. 19	whether the bill offered shall be now read?

It was resolved in the negative.

Dissentient<sup>s</sup>,

For that the main foundation, and greatest motive for the legislative authority to intermeddle in the settlement of private mens estates, is the desire and free consent of all parties concerned in the said settlement first had and obtained, and the lord Granville, next heir to the present earl of Bath, having, in his place in this House, declared that he conceived his interest, in that estate, to be prejudiced by this bill, and that he could by no means give his consent to it.

We do therefore humbly conceive, the receiving this bill to be contrary to the usual method of proceeding in all bills of this nature; and therefore ought not to have been received.

Winchelsea,	Rochester,	Nottingham,
Craven,	Buckingham,	C. P. S. Guilford.
Granville,	Warrington,	

*Die Veneris, 2<sup>o</sup> Martii, 1704.*

*Hodie 3<sup>a</sup> vice lecta est billa,* intituled, An act for the better recruiting her Majesty's land-forces and the marines, for the year one thousand seven hundred and five.

The

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The question was put, whether this bill shall pass?

It was carried in the affirmative.

Dissentient,

Because there is in the bill this following clause, viz. [That it shall and may be lawful for the justices of the peace of every county and riding within this realm, or any three or more of them, to raise and levy such able-bodied men, as have not any lawful calling or employment, or visible means for their maintenance or livelihood, to serve as soldiers, for the purposes in the bill mentioned.]

Thanet, Anglesey, Dartmouth.

*Die Jovis, 15<sup>o</sup> Novembris, 1705.*

The House (according to the order of the day) taking into consideration the state of the nation, after debate,

This question was proposed, viz. That an humble address be presented to her Majesty, that her Majesty will be graciously pleased to invite the presumptive heir to the crown of England, according to the acts of parliament made for settling the succession of the crown in the protestant line, into this kingdom, to reside here.

Then the previous question was put, whether this question shall be now put?

It was resolved in the negative.

Dissentient,

Because we humbly conceive, the having a presumptive heir to the crown residing within the kingdom, would be a great strengthening of her Majesty's hands in the administration of the government, a security of her royal person, and of the succession to the crown, as by law established, in the protestant line.

Winchelsea,



Winchelsea,	Anglesey,	Howard,
Jersey,	Haverham,	Conway,
Buckingham,	Rochester,	Leigh.
Nottingham,	Abingdon,	

*Die Luna, 3<sup>o</sup> Decembris, 1705.*

*Hodie 3<sup>a</sup> vice lecta est billa*, intituled, An act for the better security of her Majesty's person and government, and of the succession to the crown of England in the protestant line.

A rider was offered to be added to the bill, to restrain the Lords Justices from giving the royal assent to any bill for repealing or altering the act 31 *Caroli Secundi*, called The Habeas Corpus Act; the act called, The Toleration Act; that called, The Triennial Act; and the Act for regulating Trials in Cases of Treason.

And the same being read,

After debate, the question was put, whether this rider shall be read a second time?

It was resolved in the negative.

Dissentient,

Because, we conceive, these acts, mentioned in the foregoing rider, are as necessary for the preservation of the protestant religion, and the rights and liberties of the subjects of England, as the Act of Uniformity, in the opinion of the House itself, is for the preservation of the Church of England.

Beauford,	Carnarvon,	Buckingham,
Scarfsdale,	Thanet,	Weymouth,
Haverham,	Anglesey,	Nottingham,
Northampton,	Rochester,	North and Grey,
Guilford,	Granville,	Geo. Bath and Wells.
H. London,	Guernsey,	

Then, after further debate, the question was put, whether this bill shall pass?

It was resolved in the affirmative.

Dissentient,

Dissentient,

1st, Because it having been our humble opinion, that nothing can so firmly secure the succession to this crown in the protestant line, as the presumptive heir's residing in this kingdom, and our proposal of an humble address to her Majesty for that purpose having been refused, this whole bill also being founded on the said heir's being absent at the time of the Queen's demise, we fear the bill may prove not only ineffectual to these good purposes for which it is designed, but dangerous also in preventing the said heir's coming hither, in the mean time, by the opinion some have of the successor's being so well secured, that no such further care needs to be taken about it.

2dly, Because every one of the seven Lords Justices, constituted by this bill, is therein made so far independent of the very successor, as not to be displaced by the said successor in that instrument, which is to be deposited here for the addition of more Lords Justices; the reason for which addition we think equally strong, by enabling also the successor to exclude, by the said instrument, any of those seven justices; which said justices may otherwise be found (when perhaps it will be too late) invested with too great a power, if they can ever be supposed capable of ill employing it.

3dly, Which last objection we conceive to be of more weight, since it was refused by the House to restrain those future Lords Justices from repealing the following acts, *viz.* An act for preventing dangers which may happen from popish recusants; and an act for the more effectual preserving the King's person and government, by disabling of papists from sitting in either House of Parliament; the act for the better securing the liberty of the subject, and for prevention of imprisonment beyond the seas; the act for the further security of his



his Majesty's person, and the succession of the crown in the protestant line, and for extinguishing the hopes of the pretended prince of Wales, all other pretenders, and their open and secret abettors; the act for exempting their Majesties protestant subjects, dissenting from the church of England, from the penalties of certain laws; the act for the frequent meeting and calling of parliaments; and the act for regulating of trials in cases of treason and misprision of treason; which laws we account the very pillars of our constitution, and that consequently no subjects whatsoever ought to be intrusted with the power of passing any act to repeal them, during the time, when it will be impossible for the successor to know any thing of the matter, or so much as that the said successor is become our sovereign.

4thly, Because in this very bill, which intrusts the Lords Justices with a power of giving the royal assent to laws of so dangerous a nature, and with all the executive power, yet, we conceive, they are restrained from revoking the least military commission, or disbanding any officer of the army, tho' never so much deserving to be suspected by them.

Lastly, We apprehend the great danger her Majesty may be exposed to, since whatever is insufficient to secure the succession in the protestant line, and may render it liable to difficulties or incertainties, must also encourage ill designs against her sacred life; which may be thought the only obstacle in the way of such wicked persons, who may flatter themselves with the hopes of confusions after it.

Beaufort, Buckingham, Nottingham,  
Carnarvon, Anglesey, Thanet,  
Denbigh, Haverham,

I dissent for the four last reasons, Granville.

And I also, North and Grey.

And I also, Guernsey.

*Die Jovis, 6<sup>o</sup> Decembris, 1705.*

Upon report from the committee of the whole House, appointed, to take into consideration her Majesty's speech at the opening of the parliament, that they were come to the following resolution, viz.

That it is the opinion of the committee, that the church of England, as by law established, which was rescued from the extremest danger by King William the third, of glorious memory, is now, by God's blessing, under the happy reign of her Majesty, in a most safe and flourishing condition; and that whoever goes about to suggest and insinuate, that the church is in danger under her Majesty's administration, is an enemy to the Queen, the church, and the kingdom.

The question was put, whether this

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House shall agree with the committee in this resolution?

Not Cont. 30

It was resolved in the affirmative.

Dissentient,

1st, Because, we humbly conceive, there may be dangers to the church always impending on several accounts: the prayer set forth to be used on the solemn fast days, under the head of a Prayer for Unity, imploring God Almighty's Grace, that every body may seriously lay to heart the great dangers we are in, by our unhappy divisions, shews plainly, that in the opinion of the compilers of that form of prayer, and in her Majesty's royal judgment, who commands it to be used in all the churches and chapels throughout England and Wales, there are very great dangers.

2dly, We humbly conceive there may be very great dangers to the church from abroad, where a person pretending to this crown is publickly owned and maintained as King of England? and



we humbly conceive the church in danger likewise from a neighbouring kingdom, which, though under her Majesty's sovereignty, during her life (which God long preserve) hath not by any means yet been induced to settle the same succession to the crown, as is established by law in this kingdom, in the protestant line ; but, on the contrary, that succession has been abrogated by the act of security, which, with several other acts lately passed in that kingdom, has been judged by this House, in the last session, to be dangerous to the present and future peace of this kingdom ; and therefore we may justly fear, there are dangers from hence both to our church and state.

3dly, We humbly conceive there may be very great danger to the church, for want of a law to prevent any persons whatsoever from holding offices of trust and authority, both in church and state, who are not constantly of the communion of the church established by law ; and therefore on account of the unhappy divisions in the kingdom, in points of religion and divine worship, as also on the account of the calamity of this age, in the too publick and common disowning any religion at all.

4thly, Though we have an entire confidence in her Majesty's great zeal and piety to the church, we dare not in duty to her Majesty's person, and to the service of her government, condemn all such as may have fears in relation to the preservation of the church and safety of the crown.

Lastly, Being sincerely convinced, that these reasons, among some others mentioned in the debate, are sufficient to justify our fears, we humbly conceive, that it is not a proper way to prevent dangers, by voting there are none.

Buckingham, H. London, Denbigh,

Thanet, Granville, Rochester,

Guilford,

Guilford,	Guernsey,	Weymouth,
Conway,	Winchelsea,	Howard,
Geo. Bath and Wells,	Anglesey,	Leeds,
Beaufort,	Scarfsdale,	Carnarvon,
Abingdon,	North and Grey,	Chandos,
Osborne,	Northampton,	Nottingham,
I dissent for the first, second, and fourth reasons.		Craven.
Haversham.		

*Die Lune, 3<sup>o</sup> Februarii, 1706.*

The bill for securing the church of England, as by law established, having been this day read a second time, and committed to a committee of the whole House,

After debate, the question was put, Contents 33 that it be an instruction to the Not Cont. 60 said committee, to insert in the said bill, as a fundamental condition of the intended union, particular and express words, declaring perpetual and unalterable an act of parliament made in the five-and-twentieth year of King Charles II. intituled, An act for preventing dangers which may happen from popish recusants?

It was resolved in the negative.

Dissentient',  
We conceive, that this act deserves to be particularly mentioned, and not left to doubtful constructions, because as it was at first made to secure our church, then in danger by the concurrence of papists and dissenters to destroy it, so we have found by experience, both in the reign of King Charles II. and King James II. that it was the most effectual means of our preservation, by removing from their employments the greatest enemies of our church; and particularly in the reign of the late King James, the assuming of a dispensing



sing power, and the illegal practices, by closetting and corrupting the members of parliament, were chiefly levelled against this Test act.

Northampton,	Buckingham,	N. Dunelm,
Thanet,	Tho. Roffen',	Granville,
Scarsdale,	Guilford,	Stawell,
Jo. Ebor',	Cestriens',	Guernsey,
Rocheſter,	Aſhburnham,	Howard,
Angleſey,	Beaufort,	Suffex,
H. London,	Nottingham,	Weymouth.
North and Grey,	Craven,	

*Die Jovis, 27° Februarii, 1706.*

Report was made from the committee of the whole Houſe, to whom was referred the conſideration of the articles of union with Scotland; and the ſaid articles being read, the ſame, upon the queſtions, were ſeverally agreed to and reſolved on by the Houſe.

Different',

To the ninth reſolution:

Be cauſe, we humbly conceive, that the ſum of forty-eight thouſand pounds to be charged on the kingdom of Scotland, as the quota of Scotland, for a land-tax, is not proportionable to the four ſhillings aid granted by the parliament of England: but if, by reaſon of the preſent circumſtances of that kingdom, it might have been thought it was not able to bear a greater proportion, at this time, yet we cannot but think it unequal to this kingdom, that it ſhould be agreed, that when the four ſhillings aid ſhall be enacted by the parliament of Great Britain to be raiſed on land in England, that the forty-eight thouſand pounds now raiſed in Scotland ſhall never be increaſed in no time to come, though the trade of that kingdom ſhould be extremely improved, and conſequently the value of their land proportionably

ably raised, which in all probability it must do, when this union shall have taken effect.

North and Grey, Howard, Guilford.

Rochester, Leigh,

Dissentient,

To the fifteenth resolution:

Because, we humbly conceive, nothing could have been more equal on this head of the treaty, than that neither of the kingdoms should have been burthened with the debts of the other, contracted before the union; and if that proposal, which we find once made in the minutes of the treaty, had taken place, there would have been no occasion to have employed the revenues of the kingdom of Scotland towards the payment of the debts of England, those revenues might have been strictly appropriated to the debts of that kingdom, and to any other uses within themselves, as should have been judged requisite, and there would have been then no need of an equivalent of very near four hundred thousand pounds to be raised on England, within this year, for the purchase of those revenues in Scotland; which however it may prove to be but a reasonable bargain upon a strict calculation, there does not seem to have been a necessity just now to have raised so great a sum, when this kingdom is already burthened with so vast ones, for the necessary charges of the war.

Rochester, North and Grey, Leigh.

Guilford,

Dissentient,

To the two-and-twentieth resolution:

Because, we humbly conceive, in the first place, that the number of sixteen peers of Scotland is too great a proportion to be added to the peers of England, who very rarely consist of more than one hundred attending lords in any one session of parliament;

Q



liament; and for that reason, we humbly apprehend, such a number as sixteen may have a very great sway in the resolutions of this House, of which the consequences cannot now be foreseen: in the second place, we conceive, the lords of Scotland, who, by virtue of this treaty, are to sit in this House, being not qualified as the peers of England are, must suffer a diminution of their dignity to sit here on so different foundations, their right of sitting here depending intirely on an election, and that from time to time, during the continuance of one parliament only; and at the same time we are humbly of opinion, that the peers of England, who sit here by creation from the crown, and have a right of so doing in themselves, or their heirs, by that creation for ever, may find it an alteration in their constitution, to have lords added to their number, to sit and vote in all matters brought before a parliament, who have not the same tenure of their seats in parliament as the peers of England have.

North and Grey, Leigh, Rochester.  
Buckingham, Guilford,

We dissent to the resolution of passing the last article.

Because, there being no enumeration of what laws are to be repealed, it is conceived too great a latitude of construction thereupon is left to the judges.

Rochester, North and Grey, Guilford.  
Leigh,

*Die Martis, 4<sup>o</sup> Martii, 1706.*

*Hodie 3<sup>a</sup> vice lecta est billa*, intituled, An act for an union of the two kingdoms of England and Scotland.

The question was put, whether this bill shall pass?

It

It was resolved in the affirmative.  
Dissentient,

Because the constitution of this kingdom has been found so very excellent, and therefore justly applauded by all our neighbours, for so many ages, that we cannot conceive it prudent now to change it, and to venture at all those alterations made by this bill, some of them especially being of such a nature, that as the inconvenience and danger of them (in our humble opinion) is already but too obvious, so we think it more proper and decent to avoid entering farther into the particular apprehensions we have from the passing of this law.

Beaufort, Stanwell, Guilford,  
Buckingham, Granville, Leigh.

*Die Sabbati, 7<sup>o</sup> Februarii, 1707.*

*Hodie 3<sup>a</sup> vice lecta est billa*, intituled, An act for rendering the union of the two kingdoms more entire and complete.

The question was put, whether this bill shall pass?

It was resolved in the affirmative.

Dissentient,

1<sup>st</sup>, Because the clause of this bill, which relates to the Privy-Council, determines the Privy-Council of Scotland, so soon as the first day of May next, by which time the provision made in the same bill, instead of the Privy-Council, for the security of the peace by appointing justices of the peace, to be constituted under the great seal of Great Britain, in the several counties of Scotland, cannot be expected to take effect; and therefore we conceive, that if that clause had been framed so as not to take place till the first of October next, as was proposed, the Privy-Council of Scotland had been abolished, as certainly as by the present bill,



bill, and with more security to the peace and tranquility of that part of the united kingdom.

2dly, Because the clause in the bill which appoints the commissions and powers to the justices of the peace, authorizes those justices to proceed against offenders during the first fifteen days after the crime committed; and that in the liberties of heritable offices and officers for life, which, at the time of the union of the two kingdoms, the justices of the peace (and all ordinary officers and ministers of justice) were by law excluded from doing; and therefore we apprehend, that the last mentioned clause in the bill might be constructed to be an incroachment upon the 20th article of the union, and by that means be the occasion of raising great jealousies and discontents throughout that part of the united kingdoms.

Cowper, C.	Marlborough,	J. Bridgewater,
Jonat. Winton,	Mar,	Seafield,
Herbert,	Berkeley,	Cholmondeley,
Crawford,	Lothian,	Greenwich,
Rivers,	Loudoun,	Stair,
Ilay,	Glasgow,	Godolphin,
Pembroke,	Radnor,	Somerfet,
Wemyss,	Cardigan,	Leven.
Roseberie,		

*Die Martis, 15<sup>o</sup> Martii, 1708.*

*Hodie 2<sup>a</sup> vice lecta est billa,* intituled, An act for naturalizing foreign protestants.

Contents 65 After debate, the question was put,  
Not Cont. 20 whether this bill shall be committed?

It was resolved in the affirmative.

*Dissentient,*

Because we humbly conceive, that this bill of general naturalization will be very prejudicial to the trade and manufactures of this nation, and may

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may be of ill consequence to our liberties and religion.

Buckingham, Thanet, Guilford,  
Guernsey, North and Grey, Nottingham.  
Searsdale, Anglesey,

*Die Luna, 28° Martii, 1709.*

*Hodie 3<sup>a</sup> vice lecta est billa,* intituled, An act for improving the union of the two kingdoms.

A rider was offered to be added to the bill, which was read as follows:

(Provided always, and be it enacted by the authority aforesaid, that no person shall be tried for high-treason, or misprision of high-treason, unless a copy of his indictment, together with all the witnesses names endorsed upon it, as it shall come from the grand jury, shall be delivered to the prisoner five days at least before the trial of the said prisoner.)

Contents 25

Not Cont. 40

Then the question was put, whether this rider shall be read a second time?

It was resolved in the negative.

Dissentient,

We conceive it not for the safety of the subject, that the names of those witnesses, which shall appear endorsed on the indictment, when it comes from the grand jury, shall be concealed from the prisoner, who, by receiving notice of such witnesses, five days before his trial, may be enabled to discredit them, if he be innocent, and yet not enabled to escape in case he be guilty.

Buckingham, Loudoun, Hamilton,

Peterborough, Seafeld, Rothes,

Dover, Annandale, Warrington,

Guilford, Craford, Ilay,

Greenwich, Roseberie, Denbigh,

Scarfdale, Scarbrough, Mar,

Q 3

Poulett,



Poulett, Montrose, Wemyss,  
 Gi. Sarum, Roxburghe, Orkney.

Then the question was put, whether this bill  
 shall pass?

It was resolved in the affirmative.

Dissentient,

We humbly take leave to protest against the  
 title, preamble and body of this bill, for the rea-  
 sons following:

1st, We conceive the general title of this bill  
 very improper, because it does not express the  
 particular purposes of it, which are altering the  
 laws of the northern part of Britain, and the  
 method of trials in matters relating to treason;  
 and because we apprehend, this act will be so far  
 from answering its title of improving the union,  
 that we are humbly of opinion and sincerely per-  
 suaded, it may have a quite contrary effect.

2dly, The preamble of this bill may happen to  
 give unnecessary grounds of suspicion, to mistaken  
 people, that there is a tendency towards a total al-  
 teration of the laws of Scotland, which cannot but  
 create great uneasiness to that people, who rested in  
 a confidence, that their private laws were secured to  
 them by the articles of the union, so as not to be  
 altered without the evident utility of the people of  
 Scotland.

3dly, It does not appear to be necessary, that  
 new courts and jurisdictions should be created in a  
 country, where the courts of justiciary were to be  
 preserved in the exercise of their authority by the  
 articles of the union, though it might be thought  
 reasonable, that the same facts and offences might  
 be esteemed treason and misprision of treason, and  
 that the punishments might be likewise the same;  
 and we do humbly conceive, that the commissions  
 of oyer and terminer may be construed an impair-  
 ing of the authority of the courts of justiciary in  
 Scotland,

Scotland, and the entire alteration of the methods of trials may render it very difficult to prosecute any person for the crimes of treason, and very insecure for the people, who are to make their defence in unknown methods.

4thly, The general description of treason in this act, without specifying either the particular facts that shall be accounted treasonable, or the particular laws to be established in both kingdoms, is a just exception against the bill; for it would have been a great satisfaction to the people of North Britain, if these laws had been revived in a parliament, where their representatives might have had the time to have examined the reasonableness of them, and had a share in the passing them; but the enacting all the laws in gross, as the laws of England, without entering into any detail or consideration of them, may create great uneasiness.

5thly, The present laws of Scotland, in relation to the forfeitures, ought to have been considered as established upon the most solid foundations, since they were settled upon the tender of the crown to King William, and accordingly passed into laws at that time, which the subjects might well conclude they should never be deprived of: but the proviso in this act relating to marriage settlements is only a remedy in part, and but a share of the just provisions made on behalf of the subjects in that remarkable and happy revolution, which so much improved the constitution of both kingdoms.

Lastly, We conceive, that whereas the qualification for a jury-man to be sworn upon the pannel is, by this act, affixed to the possession of forty shillings per ann. it ought to have been kept up to what the law of England now ordains in trial, which is, that the jury-man be seized of ten pounds per ann. in his own right, or that of his wife's.



Buckingham,	Guilford,	Gl. Sarum,
Annandale,	Denbigh,	Mar,
Roseberie,	Loudoun,	Peterborow,
Seafeld,	Orkney,	Wemyss,
Crafurd,	Roths,	Ilay,
Dover,	Greenwich,	Hamilton.
Montros,	Roxburghe,	

*Die Martis, 14<sup>o</sup> Martii, 1709.*

Report was made from the committee appointed to inspect into precedents of impeachments concerning high crimes and misdemeanors, and some of the precedents being read at large.

After debate, the question was put, Contents 65 by the law and usage of parliament in prosecutions, by impeachments for high crimes and misdemeanors by writing or speaking, the particular words supposed to be criminal are not necessary to be expressly specified in such impeachments? Not Cont. 47

It was resolved in the affirmative.

**Dissentient<sup>s</sup>,**

1<sup>st</sup>, Because, we conceive, the law of the land is as much the rule of judicature in parliament, as it is in the inferiour courts of justice; and since, by the opinion of all the judges in all prosecutions by information or indictment for writing or speaking, the particular words, supposed to be criminal, must be expressly specified in such informations or indictment; and that this is the law of the land, confirmed by constant practice: we conceive, that there is the same reason and justice for specifying in impeachments the particular words supposed to be criminal, for otherwise a person who is innocent and safe by the law, out of parliament, may nevertheless be condemned in parliament.

For we conceive, that some reasons of law and justice, why the words supposed criminal must be specified

specified in informations and indictments, may be, that the party accused may certainly know his charge, and be thereby enabled to defend his innocence; that the jury may know it too, and be enabled thereby the better to apply the evidence given by the witnesses to the matter of such charge; and that the judges themselves may the better judge of the nature of the crime, and of a punishment adequate to it; which in cases of misdemeanors, which are indefinite and innumerable, must extremely vary, according to the heinousness of the offence; and finally, that the House of Lords, upon complaint to them, may also judge whether the fine, which is usually one of the punishments for misdemeanors, do not exceed the demerit, especially since by the bill of rights, exorbitant fines are declared to be illegal; which reason seems to be fully as strong, in the case of impeachments, as in indictments and informations: for the particular words are as necessary to enable the Lords to determine uprightly and impartially, as the jury or judges, and as necessary for the defence of the accused here, as in the courts below; and if there were to be a difference, it seems more necessary in this high court, for the weightier the prosecution is, the more need has an unfortunate man of indulgence, and all lawful favour; and surely there cannot be a heavier load upon a man, than an accusation by all the Commons of Britain.

2dly, We do not remember any precedent insisted on for the maintenance of this resolution, save only the case of Dr. Manwaring, which, we conceive, could not warrant this resolution: for,

1. The words charged upon him by the Commons declaration were not compared with the sermons, though it was desired, and consequently no lord could say, they were not the words of the sermon; and, therefore, upon such uncertainty,

we



we conceive, we could not ground a positive resolution.

2. The charge upon him taken out of his sermon, on the fourth of May 1628, seems to be the very words by him spoken, for they were attested by ear-witnesses, who surely never were or could be admitted to attest their own conjectures of the scope of a sermon, and not specify the very words, for that would be to make the witnesses to be the judges.

3. Besides, in such a case as this, where the party did not insist upon any legal and just exceptions, of which he might have taken advantage, if he had made his defence, which he did not, but submitted and begged pardon; this ought not to be looked upon as a precedent or authority to justify the illegality of the form of that impeachment.

3dly, But although this precedent were full, and express to the point resolved, we humbly conceive, that our precedent is not sufficient to support a law and custom of parliament, nor consequently a resolution declaring it; for surely there is great difference between a single instance, and a law and custom.

4thly, Especially since, we conceive, that in all the precedents, at least all that have appeared to us, for four hundred years, of the prosecutions in parliament, the particular words charged as criminal, have been constantly expressed in the articles, or declarations of impeachments.

E. 2. *Exilium Hugonis de le Spencer patris & filii*, the first article was, for making a bill in writing, the tenour whereof was particularly set forth.

28 H. 6. *William de la Pool*, sixth article was, for words spoken by him sitting in the Council in the Star-Chamber, viz. That he said, (He had a place in the Council-House of the French King, as he had here, and was as well trusted as he was

here;

here; and could remove from the French King the priviest man of his Council if he would.)

Lord Finch.

The opinions he delivered are set forth *in hac verba*, as also the times when he delivered them.

Another opinion delivered by him in the Exchequer-Chamber, and Western Circuit, is set down in his express words.

Doctor Cosens.

He is charged with words delivered in a sermon at Durham; the words are these, *The Reformers, &c.*

Articles 19. Charges him with words in like manner; the words were these, *The King, &c.*

1641. Berkeley.

Article 1. The words charged upon him are expressly mentioned.

4 and 5. That he subscribed an opinion *in hac verba*, which are specified.

6. The matter therein charged, though of record, was copied and delivered with the articles.

7 and 8. The words spoken, and the place expressly set forth.

1641. Judge Crawley.

Articles, For subscribing and giving opinions, 1, 2, 3. set forth *in hac verba*.

1641. Herbert.

For exhibiting articles against the five members, which articles follow in these words, &c.

1641. Thirteen bishops impeached for making and promulging, in 1640, several constitutions and canons, contrary to the King's prerogative, &c.

They demurred because the charge was general, but receded from this demurr, because it appeared to be particular.

E. Staf-



1641.

E. Stafford.

Article 2. Expresses the words spoken by him, and the time.

4. 20, 21, 22, 23, 24, 25, 27. expresses the very words spoken by him.

26. Is in like manner with an inuendo of his meaning.

1642. Archbishop Laude.

Ar. 1, 4, 10. Expresses the words spoken by him.

2. Expresses the words spoken by him, and the time and place.

So necessary did the long parliament itself think it, to pursue the forms of law in all their prosecutions.

Upon the whole therefore, we humbly conceive, that so great a number of precedents is sufficient to outweigh the single instance of Dr. Manwaring's case, how opposite soever it may seem to be to the present case, which, for the reasons we have mentioned, is far from being plain and clear, or having the full authority of a precedent; and the law and custom of parliament, as we conceive, is to be determined by constant course and practice, and not one precedent, occasioned by so odious doctrines as those of Dr. Manwaring; nor can the contrary assertion to the abovesaid resolution be of any ill consequence to impeachments by the Commons, because it is easy for them to specify the words which offend them, but extremely difficult for the accused to defend himself without knowing them; and as all, who are charged criminally, have leave to make their defence, so they should also have allowed to them all lawful means for it.

Jo. Ebor', Scarbrough, Abingdon,  
Scarsdale, Conway, North and Grey,  
Beaufort, H. London, Osborne,  
Berkshire, Thanet, N. Duresme,  
Plymouth,

Plimouth,	Northampton,	Stawell,
Denbigh,	Willoughby de Broke,	Lempster,
Rochester,	Howard,	Leeds,
W. Cestriens',	Suffex,	Anglesey,
Guilford,	Ferrers,	Jersey,
Guernsey,	Yarmouth,	Craven.
Nottingham,	Weymouth,	

*Die Jovis, 16<sup>o</sup> Martii, 1709.*

The order of the fourteenth instant being read, for taking into consideration the impeachment of Dr. Henry Sacheverell, article by article,

And it being moved to declare, That the Commons had made good the first article against Dr. Sacheverell.

After long debate thereupon, this question was proposed, That the Commons have made good their first article of impeachment against Henry Sacheverell, doctor in divinity.

And after further debate there-  
 Contents 68 : upon, this question was put,  
 Not Cont. 52 whether this question shall be  
 now put?

It was resolved in the affirmative.

Dissentient',

Because, we humbly conceive, there are no reflections therein contained on the memory of the late King William, nor the revolution, and that there is no offence charged therein upon Dr. Sacheverell against any known law of the land.

Ormonde,	Dartmouth,	Shrewsbury,
Leeds,	Mar,	Say & Seale,
Scarborough,	Hamilton,	Jo. Ebor',
Beaufort,	Suffolke,	Lexington,
Suffex,	Poulett,	Berkshire,
Tho. Roffen',	Weymouth,	Rochester,
Thanet,	Stawell,	Craven,
H. London,	Geo. Bath and Wells,	Denbigh,
		Abingdon,



Abingdon,	N. Duresme,	Scarsdale,
Anglesey,	North & Grey,	Haverham,
Howard,	Northesk,	Weston,
Berkeley of Strat-	Guernsey,	Yarmouth,
ton,	Leigh,	R. Ferrers,
Northampton,	Willoughby de	Nottingham,
Plimouth,	Broke,	Conway,
Guilford,	Lempster,	Chandos,
W. Cestriens',	Buckingham,	Wemyss.
Osborne,	Jersey,	

Then the main question was put, That the Commons have made good their first article of impeachment against Henry Sacheverell, doctor in divinity?

It was resolved in the affirmative.

Dissentient,

Because, by the laws of the land, the laws of parliament, and the inherent right of peerage, every peer is to judge for himself, both of the fact as well as of the law, and cannot be precluded from it by any majority; which indeed must determine the case, in respect of the criminal, but never did, nor can preclude any lord from voting the party accused, Guilty, or Not Guilty of the fact, as well as of the crime of such fact.

Leeds,	Suffex,	Conway,
Jersey,	W. Cestriens',	Geo. Bath and
H. London,	Tho. Roffen',	Wells,
Berkshire,	Lempster,	Beaufort,
Denbigh,	Scarsdale,	Ashburnham,
Thanet,	Northampton,	Nottingham,
Scarborough,	Weymouth,	Rocheester,
Craven,	Stawell,	R. Ferrers,
North and Grey,	Plimouth,	Howard,
Osborne,	Abingdon,	Guernsey.
Leigh,	Yarmouth,	

*Die Sabbati, 18<sup>o</sup> Martii, 1709.*

Ordered, That the question to be put to each Lord in Westminster-Hall shall be,

Is Henry Sacheverell, doctor in  
 Contents 65 divinity, guilty of high crimes  
 Not Cont. 53 and misdemeanors charged on  
 him by the impeachment of the  
 House of Commons; and the answer thereunto  
 shall be, Guilty or Not Guilty only.  
 Dissentient,

1st, We do humbly conceive, that the obliging every Lord to answer generally, Guilty, or, Not Guilty, to a question containing all the articles of this impeachment, is a kind of tacking upon ourselves, by an unnecessary joining, matters of a different nature, and subjecting them to one and the same determination; and consequently may prejudice the right every peer has to give a free affirmative or negative, since whoever thinks Dr. Sacheverell guilty of one part, and innocent of the other, will be obliged either to approve what he condemns, or condemn what he approves.

2dly, We do humbly conceive there is, at least, a possibility, that though a majority of the House, if admitted to vote to the articles separately, may think him innocent upon each article, yet, by this method of a general answer, he may be condemned of all; which seems not to be consistent with the usual method of justice in this House.

3dly, We do humbly conceive, that since the judgment of the House, in this case, ought to be a declaration of the law, the condition of the people will be most miserable, to have punishment inflicted for high crimes and misdemeanors, and not to have a possibility of informing themselves, what the high crimes and misdemeanors thereby punished are; for the people's only guide is the law,



law, and they can never be guided by what they can never be informed of: and we do humbly conceive, that this incertainty being in the case of a clergyman for preaching, it may possibly create some fears in good men, when they preach some doctrines of the church of England, particularly that of non-resistance; and may be made use of, by ill ones, as an excuse for the neglect of that duty, which, upon some occasions, is required of them, even by the laws of the land.

Ormonde,	Weston,	R. Ferrers,
Denbigh,	Rochester,	Guernsey,
Weymouth,	Craven,	Berkshire,
Howard,	Conway,	Scarsdale,
Geo. Bath and	Jersey,	Poulett,
Wells,	Osborne,	Nottingham,
Leigh,	Leeds,	Suffex,
Beaufort,	Guilford,	Haversham,
Northampton,	Willoughby de	Yarmouth,
Lempster,	Broke,	Anglesey,
Plimouth,	Stawell,	H. London,
Abingdon,	Thanet,	North and Grey.

*Die Jovis, 11<sup>o</sup> Januarii, 1710.*

A petition of Henry earl of Gallway, and another of Charles lord Tyrawley, were read, desiring time to put in an answer in writing, to the matters contained in the entry on the journal of this House of the ninth instant, before their Lordships do proceed to any determination thereon.

Contents 57 After debate, resolved, upon the  
Not Cont. 46 question, that the said petitions  
be rejected?

Dissentient,

Because, that when a question was stated in the House, which seemed to us to import a censure on the conduct of the earl of Gallway, lord Tyrawley, and general Stanhope, the two lords, being  
now

now in town, should, we conceive, have been heard in their defence, before the question passed, though they had not petitioned to put in their answers; much less ought the said petitions to have been rejected; and, we think, that their having been before examined only as to what they remembered concerning the council of Valencia, when they did not know that any, much less what censure was intended upon the opinions given at that council, is sufficient to satisfy what we apprehend to be the rule of natural justice, that every one should have an opportunity of answering for themselves, at least upon their humble petitions, before what we take to be a public censure, should pass upon them.

Hallifax,	Leicester,	Dorchester,
Ashburnham,	Stamford,	Kent,
Mohun,	Rockingham,	Gi. Sarum,
Godolphin,	J. Ely,	R. Petriburg',
W. Carliol',	Jo. Landaff,	J. Bridgewater,
W. Asaph,	Bedford,	Harvey,
Devonshire,	Lincoln,	Marlborough,
T. Wharton,	Haversham,	Dorset,
W. Lincoln,	Sunderland,	Jo. Litch' & Cov',
J. Winton',	Jo. Bangor,	Oxford,
C. Norwich,	Somers,	Berkeley,
Scarborough,	Herbert,	Cowper,

Then it being moved, that the earl of Gallway and the lord Tyrawley (if without) might be called in and heard, it was ordered accordingly; and they not being present, the House (according to order) was adjourned during pleasure, and put into a committee, to take into further consideration the present state of the war in Spain.

After a long time spent therein, the House was resumed, and the earl of Abingdon reported, That the committee had come to the following resolution, *viz.*

R

(That



(That the earl of Gallway, lord Tyrawley, and general Stanhope, insisting in a conference held at Valencia some time in January 1706-7, in the presence of the King of Spain, and the Queen's name being used in maintenance of their opinion, for an offensive war, contrary to the King of Spain's opinion, and that of all the general officers and publick ministers, except the marquis Das Minas; and the opinion of the earl of Gallway, lord Tyrawley, and general Stanhope, being pursued in the operations of the following campaign, was the unhappy occasion of the battle of Almanza, and one great cause of our misfortunes in Spain, and of the disappointment of the duke of Savoy's expedition before Thoulon, concerted with her Majesty.)

And the question being put, whether to agree with the committee in the said resolution?

It was resolved in the affirmative.

Dissentient,

1st, Because, we conceive, that the proofs, which have been before the House, were not sufficient to warrant the facts, as they are stated in the question.

2dly, Because, we conceive, that the said proofs do not support the consequences drawn from the facts stated in the question, especially the disappointment of the expedition against Thoulon, which, as we apprehend, was clearly occasioned by other causes, and not by the cause assigned in the question.

3dly, Because, we conceive, it may be of dangerous consequence, if those, who may have the honour to serve the Queen in Spain, should from henceforth have reason to apprehend, that they may be censured for presuming to insist on such opinions, as shall appear to them to be most for the Queen's service, and the common cause, if contrary to the opinion of the King of Spain and his ministers.

Hallifax,

Hallifax,	Devonshire,	Leicester,
Asliburnham,	T. Wharton,	Stamford,
Mohun,	Orford,	Jon. Winton,
W. Lincoln,	J. Ely,	W. Carliol,
C. Norwich,	Jo. Landaff,	W. Asaph,
Godolphin,	Rockingham,	Marlborough,
Scarborough,	Harvey,	Haverham,
Kent,	Dorset,	Sunderland,
Gi. Sarum,	J. Litch' & Cov',	Jo. Bangor,
Ric. Petriburg',	J. Bridgewater,	Sommers,
Bedford,	Lincoln,	Dorchester,
Berkeley,	Herbert,	Cowper.

*Die Veneris, 12<sup>o</sup> Januarii, 1710.*

Upon report from the committee of the whole House, appointed to take into further consideration the present state of the war in Spain, that they had come to the following resolution, *viz.*

(That it appears by the earl of Sunderland's letters, that the carrying on the war offensively in Spain was approved and directed by the ministers, notwithstanding the design of attempting Thoulon, which the ministers at that time knew was concerted with the duke of Savoy; and therefore are justly to be blamed for contributing to all our misfortunes in Spain, and to the disappointment of the expedition against Thoulon.)

Which being read by the clerk,

The question was put, whether to  
 Contents 68 agree with the committee in the  
 Not-Cont. 48 said resolution?

It was resolved in the affirmative.

Dissentient,

Because, that considering the army of the allies in Spain was to receive so great an addition of troops by the supply sent under the earl Rivers, the general desire and expectation of the kingdom to have the war brought to a speedy conclusion,



sion, and all other circumstances of the war, as it then stood; we are of opinion, that an offensive war was then fittest for those in her Majesty's service to advise; and we do not find reason by any thing arising on the examinations and debates to be of another opinion; the occasion of fighting the battle of Almanza depending, as we conceive, on causes subsequent to that advice; the ill success of it, as we apprehend, being justly attributed to other manifest reasons; and the real design on Thoulon, as finally adjusted with the duke of Savoy, and afterwards pursued, not requiring, as appears to us, the assistance of any force from Spain.

Devonshire,	Bolton,	Marlborough,
Kent,	Jon. Winton,	W. Carliol,
W. Lincoln,	Rich. Petriburg,	C. Norwich,
W. Asaph,	Jo. Landaff,	J. Bridgewater,
Sunderland,	Dorset,	Harvey,
Derby,	Lincoln,	Leicester,
Herbert,	Mohun,	Cowper,
Sommers,	Bedford,	Orford,
Godolphin,	G. Sarum,	J. Ely,
Ashburnham,	Berkeley,	Dorchester,
T. Wharton,	Stamford,	Rockingham,
Scarborough,	Jo. Litch' & Cov',	Jo. Bangor.

*Die Sabbati, 3<sup>o</sup> Februarii, 1710.*

Upon report from the committee of the whole House, appointed to take into further consideration the present state of the war in Spain, that they had come to this resolution, *viz.*

(That the two regiments upon the Spanish establishment, twice demanded, and provided for by parliament, were not supplied as they ought to have been.)

And the same being read,

The

The question was put, whether to  
 Contents 62 agree with the committee in this  
 Not Cont. 46 resolution?

It was resolved in the affirmative.

Dissentient',

Because the estimates in which the two regiments of Hill and Hotham were twice demanded, were agreed to by parliament for the service of Portugal, as well as of Spain; and that mistake could not, in our opinion, have been more effectually or sooner supplied than from Ireland, and in the manner they were; for it appears to us, the said estimates were not agreed to till the 11th of January 1706-7.

That the necessary order for transporting four other regiments from Ireland to Portugal were issued on the 8th of February next following; and that the money provided for the said two regiments, twice reckoned, was applied to the payment of the said four regiments from the time of their embarkation.

Devonshire,	Kent,	Hallifax,
Ashburnham,	Jon. Winton',	Gi. Sarum,
Jo. Ely,	Jo. Bangor,	W. Carliol',
Jo. Landaff,	W. Lincoln,	Cholmondeley,
Godolphin,	Rockingham,	Haverham,
T. Wharton,	Lincoln,	Harvey,
Sunderland,	J. Litch' & Cov',	C. Norwich,
Ric. Petriburg',	Stamford,	Orford,
Herbert,	Pelham,	Cornwallis,
Scarborough,	Bolton,	Bedford,
Rocheſter,	Westmoreland,	Carlisle,
J. Bridgewater,	Sommers,	Cowper.

Then another resolution of the said committee being read, *viz.*

(That not by supplying the deficiencies of the men given by parliament for the war in Spain, the



ministers have greatly neglected that service which was of the greatest importance.)

The question was put, whether to agree with the committee in the said resolution?

It was resolved in the affirmative.

**Dissentient,**

Because the resolution on the former particular is not, as we conceive, a sufficient ground for this general vote; and the committee of the whole House having declined to give any opinion on the other particulars, we think it unreasonable to proceed to a censure on the ministers for not supplying the deficiency, without first resolving on the several particulars, how far that deficiency might be justly imputed to them.

And we are of opinion, that all the money given by parliament, for the service of Spain and Portugal, has been timely and punctually issued for that service.

The rest of this protestation was expunged by order of the ninth instant, and is not legible.

Cornwallis,	Devonshire,	Kent,
Jon. Winton,	Ric. Petriburg,	W. Lincoln,
W. Carlhol,	W. Asaph,	Sommers,
Jo. Landaff,	Godolphin,	Cholmondeley,
Ashburnham,	Stamford,	Oxford,
Herbert,	Haversham,	Cowper,
Bolton,	Dorchester,	Carlisle,
Lincoln,	Scarborough,	Hallifax,
Rockingham,	J. Litch' & Cov',	Harvey,
T. Wharton,	Pelham,	C. Norwich,
Bedford,	Westmoreland,	Sunderland,
J. Bridgewater,	Gi. Sarum,	J. Ely.
Jo. Bangor,		

*Die Sabbati, 8<sup>o</sup> Decembris, 1711.*

An address on her Majesty's speech, at opening the session, was reported and agreed to, concluding, that

that it was the opinion and advice of the House, that no peace could be safe or honourable, if Spain and the West-Indies were to be allotted to any branch of the House of Bourbon.

And the question being put, whether this address shall be presented to her Majesty?

Contents 62

Not Cont. 54

It was resolved in the affirmative.

Dissentient,

We dissent to the address, because the nature of it is changed, by the insertion of the last clause, from that of an address of thanks; neither have we had any thing parliamentary from the throne, or otherwise laid before us, whereon to ground such advice as is therein contained.

And we look upon it as an encroachment on the royal prerogative, in so hasty a manner to declare our opinions, and on no better grounds, in a thing so essentially belonging to the crown as making of peace and war.

Beaufort,	Clarendon,	Suffex,
Osborne,	Denbigh,	Thanet,
P. St. Davids,	T. Chichester,	Berkshire,
Stawell,	Northumberland,	North and
Hatton,	Yarmouth,	Grey,
Joh. Bristol, C.P.S.	Plimouth,	Scarfsdale,
Willoug. de Broke,	Delawarr,	Cardigan.

*Die Jovis, 20<sup>o</sup> Decembris, 1711.*

After considering the patent for creating the duke of Hamilton duke of Brandon.

And debate concerning the matter,

The question was put, that no patent of honour granted to any peer of Great Britain, who was a peer of Scotland, at the time of the union, can intitle such peer to sit and vote in parliament, or to sit upon the trials of peers?

Contents 57

Not Cont. 52



It was resolved in the affirmative.  
Dissentient',

1st, Because, as we apprehend, by this resolution, the prerogative of the crown in granting patents of honour, with all privileges depending thereon, to the peers of Great Britain, who were peers of Scotland at the time of the union, as well as the right of the duke of Brandon, to sit and vote in parliament, are taken away; and this prerogative of the crown, and right of the duke, depending upon the construction of an act of parliament, though counsel, by order of the House, were heard at the bar, and all the judges were ordered to attend at the same time, yet the opinion of the judges were not permitted to be asked touching the construction of the said act of parliament.

2dly, Because the prerogative of the crown, as we conceive, in granting patents of honour, with the privileges depending thereon, ought not, on the construction of any act of parliament, to be taken away; unless there be plain and express words to that purpose in the said act; and, we conceive, there are no such plain and express words for that purpose in the act of union.

3dly, Because, by this resolution, all the peers of Great Britain, who were peers of Scotland at the time of the union, are supposed to be incapable of receiving any patent of honour from the crown, by virtue whereof they may be entitled to the privileges of sitting and voting in parliament, and sitting on the trial of peers; which, we conceive, is repugnant to the 4th article of the act of union, which declares the privileges and advantages which do or may belong to the subjects of either kingdom, except where it is otherwise expressly agreed in those articles, in which, we apprehend, there is no such provision.

4thly,

4thly, Because the duke of Queensbury, in all respects, in the same case as the duke of Hamilton, was introduced, sat and voted in this House in matters of the highest importance, in two several parliaments, as duke of Dover, by virtue of a patent passed since the union; and in consequence of such sitting and voting, his vote in the election of peers of Scotland was rejected; and as a further consequence thereof the marquis of Lothian was removed from his seat in this House, which he had an undeniable title to, if the duke of Queensbury's patent, as duke of Dover, had not given him a title to sit and vote in this House.

5thly, Because, by this resolution, the peers of Scotland are reduced to a worse condition, in some respects, than the meanest or most criminal of subjects.

6thly, Because, we conceive, this resolution may be construed to be a violation of the treaty between the two nations.

Winchelsea,	Kylfyth,	Mar,
Ormonde,	Rivers,	Loudoun,
Balmerino,	Blantyre,	Osborne,
Clarendon,	Hunsdon,	Roseberrie,
Oxford and Mor-	Poulett,	Ilay,
timer,	Harcourt, C. S.	Orkney.
Boyle,	Home,	

*Die Lunæ, 8<sup>o</sup> Junii, 1713.*

*Hodie 3<sup>a</sup> vice lecta est billa,* intituled, An act for granting to her Majesty duties upon malt, mum, cyder and perry, for the service of the year one thousand seven hundred and thirteen, and for making forth duplicates of lottery-tickets lost, burnt or destroyed; and for enlarging the time for adjusting claims in several lottery acts; and to punish the counterfeiting or forging of lottery orders; and for explaining a late act in relation to stamp-



Stamp-duties on customary estates which pass by deed and copy.

The question was put, whether this bill shall pass?

It was resolved in the affirmative.

Dissentient;

1st, Because, we apprehend, that the charging Scotland with this malt-tax will be a violation of the fourteenth article of the union, by which it is expressly provided, that Scotland shall not be charged with any malt-tax during this war: and it was not denied; for indeed it is undeniable, that peace with Spain is not yet concluded, and by construction of law and usage of parliament, this bill is to be reckoned as a grant to the crown, and a charge upon the people from the first day of this session, at which time even the peace with France was not made.

2dly, Because a great part of this malt-tax is for the satisfying and making up the deficiency of the malt-tax in the year one thousand seven hundred and eleven, from which Scotland being entirely free, we conceive it unjust, even though the peace were concluded, to make that part of the united kingdom pay any part of that tax, which was expressly given (as appears by the preamble) for this present war.

3dly, Because it is by the aforesaid fourteenth article expressly provided, that due consideration shall be had of the circumstances of Scotland, when any imposition or tax is laid on it; and we are fully persuaded, that it is impossible for Scotland to bear so heavy a tax, by which it will be liable to pay vastly more when the peace shall be concluded than it did during the war; whereas England has its burthens greatly diminished.

Somerset, Northesk, Scarbrough,  
 Mar, Balmerino, Linlithgow,  
 Orkney,

Orkney, Greenwich, Rosberrie,  
 Sunderland, Kinnoul, Loudoun,  
 Findlater, Lonsdale, Kylsyth,  
 Ilay, Eglintoun, Home.  
 Blantyre,

*Die Martis, 15 Junii, 1714.*

*Hodie 3<sup>a</sup> vice lecta est billa*, intituled, An act to prevent the growth of schism, and for the further security of the church of England as by law established.

Contents 56 } The question was put, whether  
 Proxies 21 } 77 this bill, with the amend-  
 Not Cont. 49 } ments, shall pass?  
 Proxies 23 } 72 It was resolved in the affirmative.  
 Dissentient,

1<sup>st</sup>, We cannot apprehend (as the bill recites) that great danger may ensue from the dissenters to the church and state, because,

1. By law, no dissenter is capable of any station, which can be supposed to render him dangerous.

2. And since the several sects of dissenters differ from each other as much as they do from the established church, they can never form of themselves a national church, nor have they any temptation to set up any one sect among them: for in that case, all that the other sects can expect is only a toleration, which they already enjoy by the indulgence of the state; and therefore 'tis their interest to support the established church against any other sect that would attempt to destroy it.

2<sup>dly</sup>, If nevertheless the dissenters were dangerous, severity is not so proper and effectual a method to reduce them to the church, as a charitable indulgence; as is manifest by experience, there having been more dissenters reconciled to the church since the act of toleration, than in all the time



time from the act of uniformity to the time of the said act of toleration, and there is scarce one considerable family in England in communion with the dissenters : severity may make men hypocrites, but not converts.

3dly, If severity could be supposed ever to be of use, yet this is not a proper time for it, while we are threatened with much greater dangers to our church and nation, against which the protestant dissenters have joined, and are still willing to join with us in our defence ; and therefore we should not drive them from us by enforcing the laws against them, in a matter which, of all others, must most sensibly grieve them, *viz.* the education of their children, which reduces them to the necessity either of breeding them in a way which they do not approve, or leaving them without instruction.

4thly, This must be more grievous to the dissenters, because it was little expected from the members of the established church, after so favourable an indulgence to them, as the act of toleration, and the repeated declarations and professions from the throne, and former parliaments, against all persecution, which is the peculiar badge of the Roman church, which avows and practises this doctrine ; and yet this has not been retaliated even upon papists, for all the laws made against them have been the effect and just punishment of the treasons from time to time committed against the state : but it is not pretended, that this bill is designed as a punishment of any crime which the protestant dissenters have been guilty of against the civil government, or that they are disaffected to the protestant succession, as by law established : for in this their zeal is very conspicuous.

5thly, In all the instances of making laws, or of a rigid execution of the laws against dissenters,

ters, it is very remarkable that the design was to weaken the church, and to drive them into one common interest with the papists, and to join them in measures tending to the destruction of it: these were the measures suggested by popish counsels, to prepare them for the two successive declarations in the time of King Charles II. and the following, issued by King James II. to ruin all our civil and religious rights; and we cannot think that the arts and contrivances of the papists to subvert our church, are proper means to preserve it, especially at a time when we are in more danger of popery than ever, by the designs of the pretender, supported by the mighty power of the French King, who is engaged to extirpate our religion, and by great numbers in this kingdom, who are professedly in his interests.

6thly, But if the dissenters should not be provoked by this severity to concur in the destruction of their country, and the protestant religion, yet we may justly fear they may be driven, by this bill, from England, to the great prejudice of our manufactures: for as we gained them by the persecutions abroad, so we may lose them by the like proceedings at home.

Lastly, The miseries we apprehend here are greatly enhanced by extending this bill to Ireland, where the consequences of it may be fatal; for since the number of papists in that kingdom far exceeds all the protestants of all denominations together, and that the dissenters are to be treated as enemies, or at least as persons dangerous to that church and state, who have always, in all times, joined, and would still join, with the members of that church in their common defence against the common enemy of their religion; and since the army there is much reduced, the protestants, thus unnecessarily divided, seem to us to be exposed to the



the danger of another massacre, and the protestant religion in danger of being extirpated.

And we may further fear, that the Scotch in Britain, whose national church is presbyterian, will not so heartily and so zealously join with us in our defence, when they see those of the same nation, the same blood, and the same religion, so hardly treated by us.

And this will still be more grievous to the protestant dissenters in Ireland, because, whilst the popish priests are registered, and so indulged by law, as that they exercise their religion without molestation, the dissenters are so far from enjoying the like toleration, that the laws are, by this bill, enforced against them.

Somerset,	Bolton,	Torrington,
Dorchester,	Grafton,	Devonshire,
Scarborough,	Derby,	Lincoln,
Nottingham,	Carlisle,	Sommers,
Haverham,	Foley,	Montagu,
Hallifax,	Greenwich,	Radnor,
W. Lincoln,	J. Ely,	W. Asaph,
Dorset & Middx <sup>l</sup> ,	T. Wharton,	Townshend,
Sunderland,	Cornwallis,	Orford,
Rockingham,	Jo. Bangor,	J. Landaff,
Schonburg and	De Longueville,	Cowper.
Leinster,		

*Die Jovis, 8<sup>o</sup> Julii, 1714.*

The House taking into consideration the state of the trade of this kingdom, with Spain and the West-Indies.

It was proposed, that an humble representation be made to her Majesty, that the benefit of the *assiento* contract, and of the licences, have been greatly obstructed by unwarrantable endeavours to gain private advantages to particular persons.

After

After debate, the question was put, Contents 40 that such a representation be made  
Not Cont. 58 to her Majesty?

It was resolved in the negative.

Dissentient?

1st, Because, as we humbly conceive, the great delays in this negotiation, which lasted about twelve months, could not proceed from any other motive, since it would have been infinitely more advantageous to the publick to have had all matters settled immediately.

2dly, The several turns this affair took, the several methods used to obtain greater advantages to the assignees, seemed to us plainly to shew, that the interest of particular persons was the chief aim in this transaction.

In the first draught of this assignment from the Queen of the *assiento* contract, the Queen was made co-partner with the company; but when there was found insuperable difficulty in this, it was offered that the Queen should assign to particular persons, who should become members with the company, paying their proportion of the joint-stock, and be subject to all other rules of the contract.

After this had been long transacting, the scene changed, and the company were now told, that the Queen expected her assignees should be in all respects on the same foot as she herself would have been, and did not think it hard for the company to make all the advances: these new hardships gave a great alarm to the company; and in a general court there was great contention, whether the *assiento* should be accepted or not, and with difficulty it was determined to receive it, even with conditions that did, in some measure, alleviate these new impositions.



Things being come to this pass, a noble lord condescended to treat with some of the directors about the proportion of money that the assignees should advance, and to promise them great benefits, if they would be easy to the assignees in those conditions: on the company's compliance with this proposal, a new method was found of settling this in Chancery; but the counsel for the company having, in the answer of the assignees, inserted words that were thought too restrictive, and too binding on the assignees to secure their payments to the company, great disputes and warmth arose on that occasion, and the writings were stopped several weeks before this could be adjusted; afterwards the assignees named in the schedules, appearing to be only trustees of the crown, who are afterwards to make a declaration of trust, and to assign over to other persons, the counsel for the company gave their opinion, that it was not safe for the company to accept the *assiento* upon those terms, it being liable to all the objections that were made to the proposition a year before.

3dly, It having been proposed by the company, when they foresaw great delays in settling the assignment of the *assiento*, that the licenses for the two ships should be dispatched, which were to take place even before the peace, that the cargo they had provided might have been sent away to be there at the fair, when the galleons, which were then sailing, should arrive: this great advantage to the publick was refused them, for no better reason, as we conceive, than that the assignees of the crown might not have had their share in the advantage; by this means the company's ships have lain long at demurrage, and they have paid interest for the money advanced, while the cargo continues useless and in a perishing condition.

Two seasons of sailing are past, and the great advantage of coming early to a market, after a long war, is entirely lost to the publick.

Lastly, Several of the court of directors declared, upon oath, at our bar, that Mr. Moore, who is known to have been in the secret, and to be in the utmost confidence with those who have transacted this whole matter, advised them to give a sum of money to the assignees to remove the obstruction.

Greenwich,	Devonshire,	Nottingham,
Somerlet,	Bolton,	Lincoln,
Grafton,	Townshend,	Scarborough,
Berkeley,	Hallifax,	Rockingham,
Orford,	Cowper,	Guernsey,
Bradford,	Foley,	Gi. Sarum,
Rochford,	Haversham,	T. Wharton.

*Die Jovis, 18<sup>o</sup> Augusti, 1715.*

*Hodie 3<sup>a</sup> vice lecta est billa*, intituled, An act for the attainder of Henry viscount Bolingbroke of high treason, unless he shall render himself to justice by a day certain therein mentioned.

The question was put, whether this bill shall pass?

It was resolved in the affirmative.

Dissentient;

1<sup>st</sup>, Because we cannot give our consent to the affirming, that the lord to be attainted by this bill is fled from justice, being known to have left England before he was impeached in parliament; nor does it appear to us, that the lord so impeached has had any summons to return, or legal notice, by proclamation or otherwise, of the charge brought up against him.

2<sup>dly</sup>, Because no particular proofs have been laid before the House of any high treason, or other high crimes and misdemeanors, with which he

S

stands



stands charged; nor has any evidence been given to this House of his adhering to the King's enemies, or being concerned in any traiterous design since he left England.

3dly, Because the time prescribed for his return is much shorter than what has been allowed to persons in like circumstances of supposed guilt, tho' of far meaner condition and character; nor do we know or believe, that there is any instance of any person whatsoever, who was out of the kingdom at the time of his being impeached in parliament, who has not had a longer day assigned for his return, before he was to stand and be adjudged attainted, or actually incur any other high pains and penalties inflicted by act of parliament.

And we think such allowance of a longer day, in the case of attainders by parliament, to be much more reasonable, as it is agreeable, not only to parliamentary usage, but to the methods of common law, in all cases of outlawry, whereby more months are allowed to the most notorious traitor (known to be fled from justice) for his coming in, before his outlawry can be recorded, than this act allows weeks, to the lord impeached, for his returning before his attainder takes place.

Fra. Cestriens', Scarfdale, Willoughby de Broke,  
Compton, Foley, Jersey,  
Stafford, Abingdon, Bathurst,  
Ashburnham, Weston, Masham,  
Lansdowne, Clarendon, Fr. Roffen'.

*Eodem die.*

*Hodie 3<sup>a</sup> vice lecta est billa*, intituled, An act for the attainder of James duke of Ormonde, of high treason, unless he shall render himself to justice, by a day certain therein mentioned.

Contents 59 The question was put, whether this  
Not Cont. 23 bill shall pass?

It

It was resolved in the affirmative.

Dissentient,

For the reasons given against the bill, intituled, An act for the attainder of Henry viscount Bolingbroke, of high treason, unless he shall render himself to justice, by a day certain therein mentioned.

Scarsdale,	Compton,	Willoug. de Broke,
Geo. Bath and	Foley,	Fr. Roffen,
Wells,	Stafford,	Abingdon,
Fra. Cestriens,	Lansdowne,	Weston,
Bathurst,	Ashburnham,	Clarendon.
Masham,		

*Die Sabbati, 21<sup>o</sup> Januarii, 1715.*

*Hodie 3<sup>a</sup> vice lecta est billa,* intituled, An act for continuing an act of this present session of parliament, intituled, An act to empower his Majesty to secure and detain such persons as his Majesty shall suspect are conspiring against his person and government.

The question was put, whether this bill shall pass?

It was resolved in the affirmative.

Dissentient,

1st, Because some provisions, which, in former bills of this nature, were thought necessary to prevent unjust imprisonment, are omitted in this.

2dly, Because the manner of continuing the suspension, by reference only, deprived this House of the opportunity freely to debate the several parts of the act so continued.

3dly, Because by this bill the liberty of the subject is in greater danger, than if the act suspended were totally repealed.

4thly, Because no provision is made in this act for restraining the extravagant executions of the power given to ministers, who are, like other men,



subject to passion and revenge, at whose will and pleasure the most dutiful and loyal subjects may be deprived of their liberty, and all conversation with their best friends and dearest relations; which may tend to alien from his Majesty their affections, the best security against invasions from abroad, or rebellion at home.

5thly, Because, though it may be necessary, in this time of danger, to continue the suspension of the said act, with proper provisions, yet not for so long a time as is proposed by this bill, while the parliament is like to continue sitting.

6thly, Because the ancient rights and privileges of parliament, particularly for preventing the imprisonment of members of both Houses, are not by this act sufficiently provided for, which may intimidate the members from using freedom of speech in parliament, so necessary for advising his Majesty, and for restraining the exorbitant power of evil ministers.

Abingdon.

*Die Sabbati, 14<sup>o</sup> Aprilis, 1716.*

*Hodie 2<sup>a</sup> vice lecta est billa*, intituled, An act for enlarging the time of continuance of parliaments, appointed by an act made in the sixth year of the reign of King William and Queen Mary, intituled, An act for the frequent meeting and calling of parliaments.

Contents	77	} 96	The question was put, whether this bill shall be committed?
Proxies	19		
NotCont.	43	} 61	It was resolved in the affirmative.
Proxies	18		
Dissentient,			

1st, Because, we conceive, that frequent and new parliaments are required by the fundamental constitution of the kingdom; and the practice thereof for many ages (which manifestly appears by our records) is a sufficient evidence and proof of this constitution.

2dly,

2dly, Because it is agreed, that the House of Commons must be chosen by the people, and when so chosen, they are truly the representatives of the people, which they cannot be so properly said to be, when continued for a longer time than that for which they were chosen; for after that time they are chosen by the parliament, and not the people, who are thereby deprived of the only remedy which they have against those, who either do not understand, or through corruption, do wilfully betray the trust reposed in them; which remedy is, to choose better men in their places.

3dly, Because the reasons given for this bill, we conceive, were not sufficient to induce us to pass it, in subversion of so essential a part of our constitution.

1. For as to the argument, that this will encourage the princes and states of Europe to enter into alliances with us, we have not heard any one minister assert, that any one prince or state has asked, or so much as insinuated, that they wished such an alteration.

Nor is it reasonable to imagine it, for it cannot be expected, that any prince or state can rely upon a people to defend their liberties and interests, who shall be thought to have given up so great a part of their own; nor can it be prudent for them to wish such an experiment to be made, after the experience that Europe has had of the great things this nation has done for them, under the constitution which is now to be altered by this bill.

But on the other hand, they may be deterred from entering into measures with us, when they shall be informed, by the preamble of this bill, that the popish faction is so dangerous, as that it may be destructive to the peace and security of the government, and may apprehend from this bill, that the government is so weak, as to want so extraordinary



traordinary provision for its safety; which seems to imply, that the gentlemen of Britain are not to be trusted or relied upon, and that the good affections of the people are restrained to so small a number, as that of which the present House of Commons consists.

2. We conceive this bill is so far from preventing expences and corruptions, that it will rather increase them; for the longer a parliament is to last, the more valuable to be purchased is a station in it, and the greater also is the danger of corrupting the members of it; for if ever there should be a ministry who shall want a parliament to screen them from the just resentment of the people, or from a discovery of their ill practices to the King, who cannot otherwise, or so truly, be informed of them, as by a free parliament, it is so much the interest of such a ministry to influence the elections (which by their authority, and the disposal of the publick money, they, of all others, have the best means of doing) that it is to be feared they will be tempted, and not fail to make use of them; and even when the members are chosen, they have greater opportunity of inducing very many to comply with them, than they could have, if not only the sessions of parliament, but the parliament itself, were reduced to the ancient and primitive constitution and practice of frequent and new parliaments; for as a good ministry will neither practise nor need corruption, so it cannot be any lord's intention to provide for the security of a bad one.

4thly, We conceive, that whatever reasons may induce the Lords to pass this bill, to continue this parliament for seven years, will be at least as strong, and may, by the conduct of the ministry, be made much stronger, before the end of seven years, for continuing it still longer, and even to perpetuate

perpetuate it; which would be an exprefs and absolute subversion of the third estate of the realm.

Poulett,	Montjoy,	Bruce,
Stratford,	Fran. Cestriens',	Ashburnham,
Northampton,	Bathurst,	Shrewsbury,
Fr. Roffen',	Compton,	Berkshire,
Willoughby de	Somerfet,	Tadcaster,
Broke,	Salisbury,	Guilford,
Foley,	Bristol,	Aylesford,
Anglesey,	Manfell,	Osborne,
Nottingham,	Bingley,	Gower,
Abingdon,	Trevor,	Weston,
Dartmouth,	P. Hereford,	

*Die Veneris, 22° Junii, 1716.*

*Hodie 3<sup>a</sup> vice lecta est billa,* intituled, An act for appointing commissioners to enquire of the estates of certain traitors and of popish recusants, and of estates given to superstitious uses, in order to raise money out of them severally for the use of the publick.

Contents 44 The question was put, whether this bill shall pass?

Not Cont. 19 It was resolved in the affirmative.

Dissentient',

1st, We conceive there is no necessity of this bill, because the ordinary forms of law will bring all the forfeitures of persons attainted into the Exchequer much sooner, and with less expence to the publick, than will be by this bill.

2dly, This bill takes away the estates of persons, though innocent, and subjects them to severe penalties, not to be avoided by any method agreeable to reason or justice.

3dly, It vests all leases for years, of persons attainted in the crown, from the four-and-twentieth of June, one thousand seven hundred and fifteen; whereas, by law, such leases are not forfeited, but



from the time of conviction; and this may overthrow the estates of innocent purchasers or mortgagees of such chattle leases, who may have bought and lent their money under the safe protection of the law.

4thly, Because, by this bill, all debtors are obliged to discover the debts they owe to any person to the commissioners by the 24th of November, 1716, under the penalty of forfeiting double the debt, in case the creditor happen to be attainted at any time before the 24th of June, 1718, although before the 24th of November, 1716, he be neither accused, nor so much as suspected; and, we conceive, no construction can be made of that clause, from any seeming inconsistency in it, to exempt it from the absurdity and injustice enacted by it.

5thly, Because any arguments drawn from any part of that clause, to make the rest of it good sense, were they just, yet we cannot agree to enact such a clause, which must either be not good sense or unjust.

6thly, Because every person who has any claim to, or interest in any other man's estate, must make his claim before the commissioners by June, 1717, or else, if the person whose estate is subject to such claim, happens to be attainted by June, 1718, though till then he be never accused nor suspected, they are for ever barred; and no construction was endeavoured to be made of this clause to excuse it from the absurdity and injustice apparent in it.

7thly, The act for the Irish forfeitures, being urged as a precedent for this bill, we conceive, if that act were liable to the objections which this bill is, by having in it the like clauses, yet that is no good reason for the passing this; for if that parliament did a wrong and injustice, it is no argument for this parliament to do the same, lest, in  
process

process of time, repeated precedents of this kind may become too hard for reason and justice.

8thly, Because the general words in this bill may give occasion to the commissioners to think, and the judges to construe, that they have power to summon peers, examine them upon oath, and commit them to the common goal, which, we conceive, was contrary to the sense of the House, and far from their intention to agree to.

9thly, Because this bill takes away the power from his Majesty of doing the least act of charity to a starving wife and children out of the forfeited estates, except a provision for the wives and daughters of the late duke of Ormonde, the late lord Mar, and the late lord Bolingbroke.

Abingdon,	Gower,	Aylesford,
Montjoy,	Strafford,	Foley,
Hay,	Mansell,	Bathurst,
Trevor,	Berkeley of Stratton,	Bruce.
Compton,		

*Die Luna, 25<sup>o</sup> Martii, 1717.*

*Hodie 3<sup>a</sup> vice lecta est billa,* intituled, An act for punishing mutiny and desertion, and for the better payment of the army and their quarters.

Contents 32 The question was put, whether this bill shall pass?

Not Cont. 9 It was resolved in the affirmative.

Dissentient,

1st, Because no particular reason or occasion is so much as suggested in this bill, for keeping on foot a standing army consisting of thirty-two thousand men in this kingdom, in time of peace; and therefore this act will be a precedent for keeping the same army at all times, though this kingdom be in peace; which, we think, must inevitably subvert the ancient constitution of this realm, and subject the subjects to arbitrary power.

2dly,



2dly, Because, by this bill, the soldiers are exempted from being arrested by process of law, at the suit of any person for recovering a just debt, or upon any action whatsoever; which is a great injustice to the subjects, taking from them the benefit of the law for recovering their just demands, and for obtaining satisfaction for any injury done them by a soldier, either by wounding or maiming, or wrongfully taking away his goods: and, we conceive, this will be so far from preserving good order and discipline in the army, that, on the contrary, it will be a great encouragement to the soldiers to live in their quarters in all manner of licentiousness, and to insult their fellow-subjects both in their persons and estates, when they know, that by this law they are disabled from obtaining any effectual satisfaction from them, by the course of justice, for any such violence or injury; and the only reason offered to justify this exemption from arrests, being to prevent the taking soldiers out of his Majesty's service by collusive arrests, we think, the preventing such an imaginary mischief can be no reason to discharge the persons of soldiers from being taken upon any civil process, where the cause of action is real, which is a privilege only belonging to a peer of the realm.

3dly, Because this bill doth establish martial law extending to the life of the offenders, in time of peace, which, we conceive, is contrary to the ancient laws of this kingdom; and the soldiers are obliged to obey the military orders of their superior officers, under the penalty of being sentenced by a court-martial to suffer death for their disobedience; and that without any limitation or restriction, whether such orders are agreeable to the laws of the realm, or not; when, by the fundamental laws thereof, the commands and orders of the crown (the supreme authority) are bound and restrained

strained within the compass of the law, and no person is obliged to obey any such order or command, if it be illegal, and is punishable by law, if he does, notwithstanding any such order or command, though from the King.

Trevor, Abingdon, Northampton,  
Berkeley of Stratton, Bathurst, Dartmouth.

*Die Mercurii, 30<sup>o</sup> Aprilis, 1717.*

Upon report from the committee of the whole House, appointed to consider of the papers relating to the riots at Oxford, that they had come to the following resolution, *viz.*

(That it is the opinion of this committee, that the Lords of the committee of council, to whom the papers relating to the riots at Oxford were referred, had sufficient grounds to come to the resolution reported to his royal highness the prince, *viz.* That the heads of the University and mayor of the city neglected to make any publick rejoicings on the prince's birth-day; but some of the collegiates, with the officers, being met to celebrate the said day, the house where they were was assaulted, and the windows were broken by the rabble, which was the beginning and occasion of the riots that ensued, as well from the soldiers as the scholars and townsmen; and that the conduct of the major seems well justified by the affidavits produced on his part.)

After debate, the question was put,  
Contents 58 whether to agree with the com-  
Not Cont. 32 mittee in the said resolution?

It was resolved in the affirmative.  
Dissentient<sup>s</sup>,

1<sup>st</sup>, Because, by this resolution, the heads of all the colleges and halls within the University of Oxford stand censured, as we apprehend, for disrespect and want of duty to his royal highness the prince,



prince, in neglecting to make publick rejoicings on his birth day; whereas it sufficiently appeared to us, that no rejoicings had ever been made before that time, within the said university, on the birth-day of any heir apparent to the crown, or even on the sovereign, except only on the twenty-ninth of May, set apart by act of parliament, perpetually to be observed as a day of publick thanksgiving.

And there seems the less reason, in our opinion, for laying so heavy a charge on the heads of those learned societies, inasmuch as they have not been allowed any opportunity of being heard thereto, nor even knew themselves to be any ways accused in that particular.

2dly, Because the proceedings of the major, as we conceive, are not to be justified by law, if the affidavits which were sent to make good the complaints against the major and soldiers be considered, as well as those affidavits which were produced on the major's part, there being several enormities charged, as well on the major, as on the soldiers under his command, by the former affidavits, no way answered by the latter, or so much as denied by the major himself in any of his own affidavits or letters.

3dly, Because, we conceive, the matter of fact relating to the breaking the windows of the room wherein the major and others were, with some stones from Hurt's the ironmonger's house, has not been sufficiently examined into, for want of giving an opportunity to the complainants of replying to the affidavits relating to that matter; and suppose the truth of that fact had actually appeared upon a full examination, yet it cannot be pretended to be a legal justification of the major, for inciting or suffering the soldiers under his command, to go through the city insulting the magistrates, and breaking the windows of many citizens, who are not

not pretended to have given the least offence to them.

4thly, Because the officers and soldiers of the army may take occasion, from this resolution, to think themselves exempt from the civil power in criminal cases, and be induced thereby to contemn and resist the authority of the civil magistrates, to which they are, in such cases, as liable as any other of his Majesty's subjects.

5thly, Because the civil officers and magistrates may probably be discouraged, by this resolution, from doing their duty on such occasions, and his Majesty's subjects be deterred from making their just complaints, in an humble and dutiful manner, of any oppressions which they have suffered, or may suffer, from any officers or soldiers in the army.

W. Ebor',	North and Grey,	Willoug.deBroke,
Fr. Roffen',	Northampton,	Fran. Cestriens',
Geo. Bristol,	Litchfield,	Compton,
Bruce,	Guilford,	Ashburnham,
P. Hereford,	Harcourt,	Foley,
Buckingham,	Bristol,	Dartmouth,
Say and Sele,	Berkeley of Strat.	Montjoy,
Boyle,	Weston,	Abingdon,
Joh. London,	Trevor,	Manfell.

*Die Sabbati, 25<sup>o</sup> Maii, 1717.*

A long report was made from a committee, appointed to search and report such precedents, as may the better enable the House to judge what may be proper to be done on occasion of the petition of the earl of Oxford, and the case of the said earl, as it now stands before the House.

Contents 45      And after debate thereupon, the  
Not Cont. 87      question was put, That it is the  
                         opinion of this House, that the  
impeachment exhibited by the Commons of Great  
                         Britain,



Britain, against the earl of Oxford and earl Mortimer, for high crimes and misdemeanors, is determined by the intervening prorogation.

It was resolved in the negative.  
Dissentient,

1st, Because there seems to be no difference in law between a prorogation and a dissolution of a parliament, which, in constant practice, have had the same effect as to determination, both of judicial and legislative proceedings; and consequently this vote may tend to weaken the resolution of this House, May 22, 1685, which was founded upon the law and practice of parliament in all ages, without one precedent to the contrary, except in the cases which happened after the order made the 19th of March, 1678, which was reversed and annulled in 1685; and in pursuance hereof the earl of Salisbury was discharged in 1690.

2dly, Because this can never be extended to any but peers; for by the statute 4 Ed. III. no commoner can be impeached for any capital crime; and it is hard to conceive, why the peers should be distinguished and deprived of the benefit of all the laws of liberty, to which the meanest commoner in Britain is intitled; and this seems the more extraordinary, because it is done unasked of the Commons, who, as is conceived, never can ask it with any colour of law, precedent, reason, or justice.

Nottingham,	Abingdon,	Dartmouth,
Fra. Roffen,	Manfell,	Foley,
North and Grey,	Hay,	Bruce,
Bathurst,	Guilford,	

*Die Jovis, 20<sup>o</sup> Februarii, 1717.*

The order of the day being read, for the House to be put into a committee of the whole House, upon the bill, intituled, An act for punishing mutiny

tiny and desertion, and for the better payment of the army and their quarters.

After debate, the question was put, That it be an instruction to the committee of the whole House, to whom the said bill stands committed, that they do provide, that no punishment shall be inflicted at any court-martial which shall extend to life or limb?

It was resolved in the negative.  
Dissentient,

1st, Because the exercise of martial-law, in time of peace, with such power as is given by this bill to inflict punishments extending to life and limb, was not in the first year of this reign, nor hath in any former reign been allowed within this kingdom by consent of parliament, but hath, upon many attempts made to introduce such a power, been opposed and condemned by parliament, as repugnant to *magna charta*, and inconsistent with the fundamental rights and liberties of a free people.

2dly, Because, after the peace of Ryswick, and that of Utrecht, in the several reigns of King William and Queen Anne, of glorious and ever blessed memories, no such power was given to any court-martial; and it is well known, that the forces then continued on foot were kept in exact discipline and order.

3dly, Because it is not ascertained, either by this bill, or by any other known law or rule, what words or facts amount to mutiny or desertion, or to an exciting, causing or joining in mutiny; and consequently the judges in a court-martial have it in their power to declare what words or facts they think fit to be mutiny or desertion, and to take away the life of any officer or soldier, by such an arbitrary decision.

4thly,



4thly, Because, should death be thought the proper punishment, in time of peace, for mutiny or desertion, or even for the least disobedience to any lawful command, yet, as we conceive, the nature of such offences ought first to have been ascertained by this bill, and the said offences being declared capital, the trial thereof ought to have been left to the ordinary course of law; in consequence whereof, the officers and soldiers would, upon such trials, have been intitled to all those valuable privileges which are the birth-right of every Briton; nor doth it appear to us, that any inconvenience could thereby have arisen to the publick in time of peace, at least, not any such as can justify our depriving the soldiery of those legal rights which belong to the meanest of their fellow-subjects, and even to the vilest malefactors.

W. Ebor,	De Loraine,	Belhaven,
Willoug. de Broke,	Bristol,	Tadcaster,
Rutland,	Lumley,	Bute,
Masnam,	Dartmouth,	Trevor,
Harcourt,	P. Hereford,	Foley,
Bingley,	Weston,	Manfell,
Fr. Roffen,	Oxford,	Fr. Cestriens,
Greenwich;	Northampton,	Strafford,
Abingdon,	Joh. London,	Townshend,
Castleton,	Poulett,	Montjoy,
Devonshire,	Scarsdale,	Guilford,
Hay,	Gower,	Bathurst,
Berkeley of Stratton,	Boyle,	North and
Geo. Bristol,	Compton,	Grey.

Contents	53	} 77	And a motion being made, and the question put, That it be an instruction to the said committee of the whole House, that they do make an effectual provision to secure the obedience both of the officers and soldiers, to be continued
Proxies	24		
Not Cont.	73	} 88	
Proxies	15		

continued by this bill to the civil magistrate according to law?

It was resolved in the negative.

Dissentient?

1st, Because no provision whatsoever is made by the bill for securing the obedience of the military to the civil power, on which the preservation of our constitution depends.

2dly, Because, we conceive, that a great number of armed men, governed by martial law, as they have it in their power, so are naturally inclined, not only to disobey, but insult the authority of the civil magistrate; and we are confirmed in this opinion, as well by the experience of what hath happened here at home, as by the histories of all ages and nations; from which it appears, that wheresoever an effectual provision hath not been made to secure the obedience of the soldiers to the laws of their country, the military hath constantly subverted and swallowed up the civil power.

W. Ebor,	Bathurst,	North and Grey,
Willoughby de	Devonshire,	Compton,
Broke,	Fr. Roffen,	Geo. Bristol,
Belhaven,	Fr. Cestriens,	De Loraine,
Bute,	Masham,	Townshend,
Bristol,	Lumley,	Montjoy,
Castleton,	Abingdon,	Gower,
Bingley,	Harcourt,	Berkeley of Strat-
Foley,	Oxford,	ton,
Manfell,	Greenwich,	Northampton,
Guilford,	Rutland,	Hay,
Joh. London,	Weston,	Poulett,
Scarsdale,	Strafford,	Trevor,
Dartmouth,	Tadcaster,	P. Hereford.



*Die Lune, 24° Februarii, 1717.*

*Hodie, 3<sup>a</sup> vice lecta est billa*, intituled, An act for punishing mutiny and desertion, and for the better payment of the army and their quarters.

Contents 67 } 88 Then the question was put, whe.  
Proxies 21 } ther this bill shall pass?

Not Cont. 40 } 61 It was resolved in the affir.  
Proxies 21 } mative.

Dissentient<sup>s</sup>,

1<sup>st</sup>, Because the number of sixteen thousand three hundred forty-seven men is declared necessary by this bill; but it is not therein declared, nor are we able, any way, to satisfy ourselves from whence that necessity should arise, the kingdom being now (God be praised) in full peace, without any just apprehensions, either of insurrections at home, or invasions from abroad.

2<sup>dly</sup>, Because so numerous force is near double to what hath ever been allowed within this kingdom, by authority of parliament, in times of publick tranquillity; and being, as we conceive, no ways necessary to support, may, we fear, endanger our constitution, which hath never yet been entirely subverted but by a standing army.

3<sup>dly</sup>, Because the charge of keeping up so great a force ought not unnecessarily to be laid on the nation, already over-burthened with heavy debts; and this charge we conceive to be still more unnecessarily increased by the great number of officers now kept on the establishment, in time of peace; a number far greater (in proportion to that of the soldiers commanded by them) than hath ever yet been thought requisite in times of actual war.

4<sup>thly</sup>, Because such a number of soldiers, dispersed in quarters throughout the kingdom, may occasion great hardships, and become very grievous  
to

to the people; and thereby cause or increase their disaffection, and will, probably, ruin many of his Majesty's good subjects, on whom they shall be quartered, and who have been already by that means greatly impoverished.

5thly, Because such a standing army, dangerous in itself to a free people in time of peace, is, in our opinion, rendered yet more dangerous, by their being made subject to martial-law, a law unknown to our constitution, destructive of our liberties, not endured by our ancestors, and never mentioned in any of our statutes, but in order to condemn it.

6thly, Because the officers and soldiers themselves, thus subjected to martial-law, are thereby, upon their trials, divested of all those rights and privileges which render the people of this realm the envy of all other nations, and become liable to such hardships and punishments as the lenity and mercy of our known laws utterly disallow; and we cannot but think those persons best prepared, and most easily tempted to strip others of their rights, who have already lost their own.

7thly, Because a much larger jurisdiction is given to courts-martial, by this bill, than, to us, seems necessary for maintaining discipline in the army, such jurisdiction extending not only to mutiny, desertion, breach of duty and disobedience to military commands, but also to all immoralities, and every instance of misbehaviour which may be committed by any officer or soldier towards any of his fellow-subjects; by which means the law of the land, in cases proper to be judged by that alone, may, by the summary method of proceedings in courts-martial, be obstructed or superseded, and many grievous offences may remain unpunished.



8thly, Because the officers constituting a court-martial, do at once supply the place of judges and jury-men, and ought therefore, as we conceive, to be sworn upon their trying any offence whatsoever; and yet it is provided by this bill, that such officers shall be sworn upon their trying such offences only as are punishable by death; which provision we apprehend to be defective and unwarrantable by any precedent, there being no instance within our knowledge, wherein the judges of any court, having cognizance of capital and lesser crimes, are under the obligation of an oath in respect of the one, and not of the other.

9thly, Because the articles of war thought necessary to secure the discipline of the army, in cases unprovided for by this bill, ought, in our opinion, to have been inserted therein, in like manner, as the articles and orders for regulating and governing the navy were enacted in the thirteenth year of King Charles the second, to the end, that due consideration might have been had by parliament of the duty enjoined by each article to the soldiers, and of the measure of their punishment; whereas the sanction of parliament is now given by this bill to what they have had no opportunity to consider.

10thly, Because the clause in this bill enabling his Majesty to establish articles of war, and erect courts-martial, with power to try and determine any offences to be specified in such articles, and to inflict punishments for the same within this kingdom in time of peace, doth (as we conceive) in all those instances, vest a sole legislative power in the crown; which power, how safely soever it may be lodged with his present Majesty, and how tenderly soever it may be exercised by him, may yet prove of dangerous consequence, should it be drawn into precedent in future reigns.

11thly,

11thly; Because the clause in the bill, alledged to be made for enabling honest creditors to recover their just debts from soldiers, seems to us rather to give a protection to the soldier, than any real advantage to his creditor, or other person having just cause of action against him; it protects the person of a soldier from execution, as well as the mesne process, for any debt under ten pounds; and it protects the estate and effects as well as the person of every soldier from all other suits but for debt, where the cause of action doth not amount to the like sum; and in other cases, where the cause of action exceeds that value, plaintiffs are in many instances put under such unreasonable difficulties, that, we conceive, before they can be allowed even to commence their suit, their bare compliance therewith may become more grievous to them than the loss of their debt, or a quiet submission to the wrong sustained; by which means his Majesty's good subjects may be highly injured in their properties, and insulted in their persons by the soldiery, and yet be deprived of the legal remedies appointed for the redress of such grievances.

W. Ebor,	Harcourt,	Foley,
Compton,	Bathurst,	Mansell,
Dartmouth,	Strafford,	Fr. Roffen,
Hay,	Boyle,	Abingdon,
Fran. Cestriens,	Guilford,	Gower,
Bute,	Greenwich,	Poulett,
Tadcaster,	Weston,	Northampton,
Bingley,	Trevor,	P. Hereford,
Bristol,	Scarsdale,	Montjoy,
North and Grey,	Litchfield,	Oxford.

*Die Sabbati, 8 Martii, 1717.*

*Hodie 3<sup>a</sup> vice lecta est billa, intituled, An act to*  
impower the commissioners appointed to put in ex-



execution the acts of the ninth and tenth years of her late Majesty's reign, for building fifty new churches in and about the cities of London and Westminster and suburbs thereof, to direct the parish church of St. Giles in the Fields, in the county of Middlesex, to be rebuilt instead of one of the said fifty new churches.

Then it being moved, that in the third line of the 1st press, after the words [Queen Anne] the words [of pious memory] may be there inserted,

The same was objected to.

After debate, the question was put, whether the said words [of pious memory] shall be there inserted?

Contents 33  
Not Cont. 54

It was resolved in the negative.

Dissentient',

Because we cannot but judge these words [of pious memory] highly decent and proper to have been inserted in a bill reciting two pious and gracious acts of parliament passed in the reign of her late Majesty, for the rebuilding of fifty new churches; a work earnestly recommended by her Majesty to her parliament, and by them declared to be so much for the honour of God, the spiritual welfare of her Majesty's subjects, the interest of the established church, and the glory of her Majesty's reign.

W. Ebor',	Strafford,	P. Hereford,
Fran. Cestriens',	Joh. London,	North and Grey,
Compton,	Geo. Bristol,	Manfell,
Willoughby de	Boyle,	Berkeley of Strat-
Broke,	Masham,	ton,
Buckingham,	Fr. Roffen',	Oxford,
Poulett,	Foley,	Bathurst.

Then after further debate in relation to the aforementioned bill,

Contents 8

Contents	49	} 70	The question was put, whether this bill shall pass?
Proxies	21		
Not Cont.	38	} 63	It was resolved in the affir- mative.
Proxies	25		
Dissentient,			

1st, Because it doth not appear to us, from any declaration in his Majesty's name to either House of Parliament, that his royal leave was given for bringing in the said bill, as, we humbly conceive, it ought to have been, for bringing in a bill of this nature.

2dly, Because this bill, in our opinion, manifestly tends to defeat the ends and purposes of two acts of parliament, for building fifty new churches; and yet at the same time asserts, that the intention of the said acts would be hereby answered.

3dly, Because this bill further asserts, that the parish of St. Giles is in no condition to raise or pay the sum of three thousand pounds and upwards for the repair of its parish church, which we apprehend to be evidently false in fact; and if true, to be no reason for rebuilding the said church out of the fund given for building fifty new churches.

4thly, Because this bill moreover asserts, that the said parish, when rebuilt, and the church, which is now building in the said parish, by virtue of the acts for building fifty new churches, will be sufficient for the inhabitants of the said parish; whereas we are credibly informed, and, upon the best calculation, do believe, that there are about forty thousand souls in the said parish, and do think, that three new churches, together with the present parish church, will be barely sufficient for that number.

5thly, Because, if this precedent of rebuilding old churches out of the fund appropriated for building new ones should be followed, and the ends of the abovesaid acts should be thereby in any great measure defeated, we are apprehensive,



that many thousands of his Majesty's good subjects, in and about these populous cities, will be left unprovided of churches, whereunto they may resort for the publick worship of God, and will thereby remain destitute of the necessary means of being instructed in the true christian religion, as it is now professed in the church of England, and established by the laws of this realm.

W. Ebor,	Joh. London,	P. Hereford,
Geo. Bristol,	Strafford,	North and
Willoughby de Broke,	Bathurst,	Grey,
Berkeley of Stratton,	Poulett,	Masham,
Fr. Roffen,	Fr. Cestriens,	Foley,
Manfell,	Oxford,	Boyle.

*Die Martis, 11° Martii, 1717.*

*Hodie 3<sup>a</sup> vice lecta est billa*, intituled, An act for vesting the forfeited estates in Great Britain and Ireland in trustees, to be sold for the use of the publick, and for giving relief to lawful creditors, by determining the claims, and for the more effectual bringing into the respective Exchequers the rents and profits of the said estates till sold.

Contents	55	} 82	The question was put, whether this bill shall pass?
Proxies	27		
NotCont.	45	} 76	It was resolved in the affirmative.
Proxies	31		

Dissentient,

1<sup>st</sup>, Because, we humbly conceive, that the charges of this commission are a very great and unnecessary burthen on the publick, and will swallow up a great part of that fund the commissioners are appointed to be guardians of; whereas the ends of that trust, which is lodged in them by this bill, might have been more easily, more justly and with less expence, attained by the known and ordinary course of the law.

2<sup>dly</sup>,

2dly, Because there is erected in this bill a court of judicature with strange and new powers, viz. in a summary way, and without the formality of proceedings in the courts of law or equity to proceed by, and upon the testimony of witnesses upon oath; examination of persons claiming, or otherwise interested upon their oaths, inspection and examination of deeds, writings and records; and by all or any of the said ways and means, or otherwise, according to the circumstances of the case, or of the persons claiming, as soon as conveniently may be, to hear, determine and adjudge, all and every claim and claims: which words seem to contain the most arbitrary and unlimited authority that can possibly be created; and in particular, the expression concerning the circumstances of the persons is not only unknown to our laws, but prescribes a rule which was never yet thought to be a proper ingredient in the impartial administration of justice.

3dly, Because there is in this bill a penalty laid on the witnesses who shall forswear themselves to support any claim, but no punishment inflicted on those who shall make false oaths in order to defeat any just demand.

4thly, Because there is nothing in this bill which incapacitates the commissioners, or any in trust for them, to purchase claims on the forfeited estates; and yet in case they should make such purchases, they will become both judges and parties in the same cause, and consequently be exposed to temptations of a great and dangerous nature.

5thly, Because the reversing and making void all acts and decrees of any court of judicature, passed since the 24th day of June 1715, concerning any right, charge or interest, out of any of the forfeited estates, and the not saving to all creditors and other claimants such right as they had before



before the passing this bill, does greatly endanger, if not totally make void the just demands of such creditors or other claimants, which they have not only in many cases a right to by the ancient laws of their country, but which are secured to them (at least in that part of Great Britain called Scotland) by the faith of an act of parliament, as a future reward of their dutiful and loyal behaviour to his Majesty and his government, when the nation was threatened with the greatest dangers; which reward has been confirmed to them by a subsequent act.

6thly, Because the time of entering claims on estates forfeited, or to be forfeited, before the 24th of June, 1718, is allowed no farther than to the first of June in the said year; whereby all creditors, claimants, and *bona fide* purchasers of estates, which may be forfeited between the first and twenty fourth of June aforesaid, are absolutely and expressly barred and excluded.

7thly, Because the setting up a new court of judicature for claims on forfeited estates, in any part of Great Britain, is wholly unprecedented, and the privileges and jurisdiction of this House are thereby diminished and endangered, but much more so, by the reversing decrees of courts of judicature already made, which, whether they are erroneous or legal, ought (as the constitution of this kingdom now is, and hath hitherto been) to be reviewed, reversed, or affirmed by no other jurisdiction whatsoever, but that which is inherent in the House of Lords.

8thly, Because the court of session is by this bill discharged from exercising their lawful jurisdiction, notwithstanding that the foundation of the constitution of the united kingdom of Great Britain is the articles of the union; wherein it is expressly stipulated, that the court of session shall remain

remain in all times coming as it was then constituted, with the same authority and privileges as before the union; and though the said court was subjected to regulation, for the better administration of justice, yet the jurisdiction of it was in no case to be totally extinguished.

gthly, Because the erecting new jurisdictions with such indefinite powers, exclusive of the House of Lords, the making void or endangering the rights of great numbers of lawful creditors or other claimants, secured to them by the laws, and the depriving the courts of justice of their judicature as aforesaid, we humbly apprehend, cannot but raise the highest discontents in the minds of his Majesty's subjects.

Buckingham,	Oxford,	Hay,
Strafford,	Plimouth,	Greenwich,
Poulett,	North and Grey,	Boyle,
Geo. Bristol,	Mansell,	Weston,
Bathurst,	Fr. Roffen',	Litchfield,
Willoughby de	Northampton,	Belhaven,
Broke,	Compton,	Foley,
De Loraine,	Tadcaster,	Masham,
Trevor,	Guilford,	Montjoy.

*Die Lune, 17<sup>o</sup> Martii, 1717.*

*Hodie 3<sup>a</sup> vice lecta est billa,* intituled, An act for the better explaining several acts therein mentioned, for erecting of hospitals and workhouses within the city of Bristol, for the employing and maintaining the poor thereof, and for making the said acts more effectual.

Contents 58 After debate, the question was put,  
Not Cont. 22 whether this bill, with the amendment, shall pass?

It was resolved in the affirmative.

Dissentient,



Dissentient; <sup>2dly</sup> Because the comprehensive latitude of this bill is such, that all persons without discrimination, whether well or ill affected to our constitution in church or state, Papists as well as Protestants, Nonjurors as well as those who take the oaths, Jews as well as Christians, are alike capable of being admitted into the corporation to which this bill refers; and of sharing all the trusts and powers lodged in the members thereof.

<sup>2dly</sup> Because this bill, whilst it complains of the difficulty of finding a sufficient number of proper and well qualified persons to be elected and constituted guardians and officers of the said corporation, and, to avoid that pretended difficulty, lets in dissenters, doth at the same time shut out seventeen church-wardens, who, by a former act, were incorporated therein, and who, by the constitution, have the care of the poor in a special manner intrusted with them.

<sup>3dly</sup> Because this bill repeals a law, by which the dissenters were excluded from places and offices in this corporation, and this repeal may hereafter be made use of as a precedent for abrogating other laws, as yet in force, in order to the admission of dissenters into all places and offices whatsoever.

<sup>4thly</sup> Because this bill, by exempting guardians and officers therein mentioned from the penalties and forfeitures of the corporation and test acts, doth, in our opinion, very much weaken the force of those acts, which are declared by the legislature to have been made for the security of the church of England, as by law established, and, as such, are we conceive, ratified, and made perpetual by that clause in the act of union, which enacts, (That the act for the ministers of the church of England to be of sound religion, and the act for the uniformity, and all and singular other acts of parliament, then in

in force, for the establishment and preservation of the church of England, shall remain and be in full force for ever.)

Geo. Bristol, Mansell, Compton,  
Hay, Jonat. Winton', Oxford,  
Strafford, Joh. London, Boyle,  
Bathurst, Montjoy, Weston,  
Fr. Roffen',

*Die Veneris, 17<sup>o</sup> Aprilis, 1719.*

A long report being made from a committee appointed to examine what sums of money have been issued, or ordered to be issued, out of the chamber of London, for the prosecuting, defending or maintaining certain causes on writs of error in this House, or any other causes of the like nature; for such time passed as the committee shall think proper, and by what warrant or authority, and on whose application.

And after debate had thereupon, the  
Contents 46 question was put, that it is the  
NotCont. 17 opinion of this House, that the  
common-councils of London, having issued great sums of money out of the chamber of London, in maintaining several suits at law, between citizen and citizen, relating to controverted elections, have abused their trust, and been guilty of great partiality, and of a gross mismanagement of the city treasure, and a violation of the freedom of elections in the city?

It was resolved in the affirmative.

Dissentient,

1st, Because no proof upon oath was made before the committee, of any one of the facts mentioned in the report; and, we conceive, that without a due proof, upon oath, being first made, so heavy a censure ought not to be passed on any person whatsoever, much less on so considerable a body as the  
the



the common-council of the city of London, who have been, on many pressing occasions, eminently serviceable to the publick.

2dly, Because the common-council of the city of London have never been heard to the several matters of which, they stand condemned by this resolution, nor have they been any way made acquainted, as far as appears to us, that they stood accused before this House of any misbehaviour whatsoever.

3dly, Because the several matters or offences, specified in this resolution, are properly cognizable in courts of law or equity; and this resolution may, we fear, be construed as a determination of such matters as may possibly hereafter be brought again before this House judicially, by writ of error or appeal.

4thly, Because the several sums of money mentioned in the report to have been issued by the common-council out of the chamber of the city of London, in relation to controverted elections, might possibly, had the common-council been heard, have appeared to have been so issued by them in defence of their ancient rights and privileges, and in order to prevent any incroachment thereupon.

Buckingham,	Compton,	Bruce,
Montjoy,	Trevor,	Oxford,
Harcourt,	Gower,	Weston,
Mansell,	Strafford,	Northampton,
Bathurst,	Carleton,	Foley.
Bingley,		

*Die Martis, 10<sup>o</sup> Januarii, 1720.*

Upon report from the committee of the whole House, to whom it was referred to take into consideration the causes of the unhappy turn of affairs that

that has so much affected the publick credit, that they had come to the following resolution, viz.

(That it is the opinion of this committee, that the constitution from the commissioners of the treasury, dated the 6th of May 1720, appointing the directors of the South-Sea Company to be managers and directors for performing such matters and things as by the act for enabling the said company to increase their present capital stock, are directed, has been conformable to precedents, and legal.)

Then the said resolution being read by the clerk, the question was put, That the House do agree with the committee in this resolution?

It was resolved in the affirmative.

Dissentient,

1st, Because the act of the last session of parliament for enabling the South-Sea Company to increase their capital stock (upon which act the legality of the constitution in the question must wholly depend) hath vested the directors and managers to be appointed by the commissioners of the treasury with such trusts and powers, and required such things to be done by them, as, we conceive, could not be intrusted to the directors of the South-Sea Company to execute, according to the true intent and meaning of the said act.

2dly, Because we conceive it to be inconsistent with the said act, that the directors and managers appointed by the commissioners of the treasury (who by the act are intrusted to ascertain what annuities shall be taken in, and what debts paid off by the said company; what additions, in respect thereof, shall be made to the capital stock of the said company; how much is to be paid by the said company into the Exchequer for the use of the publick; what new allowance is to be made to the same corporation for charges of management;



to enter into books the prizes to be agreed on between the company on the one part, and the proprietors of the publick debts on the other part; to adjust the accounts of the debts and annuities taken in by the company; and to certify and transmit duplicates of the accounts so adjusted, among others, to the directors of the South-Sea Company) should be the directors of the South-Sea Company, and they only.

3dly, Because the said directors of the company appear to us plainly to be concerned in interest, so as to incline them to execute the said powers or trusts partially for the company, unless restrained by a great degree of honesty; and if there should be any mistake by them committed, wilfully or otherwise, to the advantage of the company and disadvantage of the said proprietors, in any the matters intrusted to the said directors and managers, we do not find any provision in the said act to rectify the same, nor conceive how it can be done, unless by application to, and by consent of, the said directors and managers, who are the directors of the South-Sea Company, and no other: which, we think, could never be the meaning of the act, but that the intent thereof must be, that the said trusts of directors and managers should have been executed by impartial and indifferent persons.

4thly, We conceive, that the said act expressly requires the commissioners of the treasury to appoint fit persons to be directors and managers for executing the powers and trusts above specified; and therefore, if the abovementioned reasons did not sufficiently prove the constitution in the question not to be agreeable to the said act, yet it seems very clear to us, that the directors of the South-Sea Company were, of all others, the most unfit

unfit for such a trust, and consequently not such persons as are expressly required by the said act.

And we cannot agree, that the said constitution is precedent.

1. Because the precedents produced are all in time before the passing the act of parliament, on which the present question did arise; and therefore, in our opinion, can be of no weight in determining any question that dependeth on the construction of the said act, unless such precedents had been founded on some former act or acts of parliament, the same in all material points with the act abovementioned; which, it appears to us, neither the said charter, nor commissions or appointments produced as precedents were.

2. All the cases relied on, as precedents (except the last) are, as we conceive, widely differing from the case in question; that marked No. 1. is dated before the erection of the South-Sea Company, and therefore did not, nor could, confer any powers on the directors of the company, which was not then in being, but is directed to the members of other corporations, divers great officers, and very many other persons, in order to the erecting the South-Sea Company; the five following, from No. 2 to No. 6, included, are indeed to empower the directors of the South-Sea Company, but it is only to take subscriptions of tallies, orders, debentures, and the like government securities, and to compute the interest due thereon, in order to the admitting the proprietors into the company, at the rates stated in the acts of parliament, to which the charter and commissions relate; but none of them empower the directors of the South-Sea Company to enter, adjust, or certify, or to do any matter relating to contracts to be made, whereto the company was to be made a party, as in the present case.

U

3. And



3. And as to the said last case, cited as a precedent, marked No. 7. which comes the nearest to the present, the directors of the South-Sea Company being thereby appointed directors and managers (which they are not by any of the former) to execute all the powers given to directors and managers, by the act of the fifth of his present Majesty, for redeeming the fund appropriated for the payment of the lottery-tickets, yet neither by that appointment, or the act referred to, had the directors of the South-Sea Company any authority to do any thing in relation to contracts, or bargains to be made, wherein the company was to be made a party; and therefore not to be compared to the present case.

4. But if the said last and only precedent, not before taken notice of, had been a precedent in point, yet it bearing date no longer ago than the 4th of May, 1719, and being signed by four of the five commissioners of the treasury, who have signed the appointment, which it is brought to justify, and having passed under silence, no occasion having happened to draw the validity thereof into question, it could be, as we conceive, of no authority to support the said last appointment, when it was drawn in question, and ordered to be considered by the committee of the whole House, appointed to enquire into the causes of the late unhappy turn of affairs, which has so much affected the publick credit at home.

For the aforesaid reasons, and lest it might be deemed to be a prejudging of a matter that may possibly be brought judicially before us.

Wharton,	North and Grey,	Guilford,
Compton,	Weston,	Scarisdale,
Litchfield,	Cowper,	Aylesford,
Abingdon,	Gower,	Strafford,
Bingley,	Bathurst,	St. John de Bletsoe.

Die

*Die Mercurii, 8<sup>o</sup> Martii, 1720.*

The House (according to order) resumed the adjourned debate which arose on Saturday last, upon the report then made from the committee of the whole House, to whom the bill, intituled, An act to preserve and encourage the woollen and silk manufactures of this kingdom, and for the more effectual employing the poor, by prohibiting the use and wear of all printed, painted, stained or dyed callicoes in apparel, household-stuff, furniture, or otherwise, after the 25th of December, 1722, (except as therein is excepted) was committed, that the committee had gone through the said bill without any amendment.

And it being proposed, in the 19th line of the 1st press, to leave out the word [two] and insert the word [one] in order to shorten the time of the commencement of the said bill,

Contents 71 After debate, the question was put,  
Not Cont. 29 whether the word [two] shall stand  
as part of the bill?

It was resolved in the affirmative.

Dissentient<sup>s</sup>,

1st, Because it appears to us very extraordinary, and, as we believe, is unprecedented, that any bill of this nature should not take effect till so long after the passing thereof, and even almost a year after the parliament, in which it is passed, must legally determine.

2dly, We think the delay in this case the more unreasonable, the miseries of the people proposed to be remedied by this bill requiring a speedy redress; and after the loss of the like bill the last sessions, deferring the relief for near two years longer, may, we fear, reduce the poor manufacturers to such want as may endanger the publick peace, or make as many as can turn themselves to



other business, to the ruin of the woollen manufactures of this kingdom.

3dly, We conceive, that till the bill shall take place, it will rather encourage than hinder the buying of printed calicoes, which is at present obstructed, by the apprehension of a much nearer and stricter prohibition; but when it shall be known not to extend to any calicoes which shall be made in furniture before the 25th of December, 1722, and that the same may be continued in use till worn out, it cannot but be a great inducement to the people to furnish themselves therewith.

4thly, We do not think it improbable, considering the mighty influence the great companies may have on publick affairs, but that attempts may be made, even before the provisions of the act take place, to repeal it; and we cannot take upon us to determine what the sense of a new parliament may be on this subject.

5thly, And, we apprehend, the deferring the remedy of the mischiefs, set forth in the preamble of the bill, for so long a time, may disappoint, in a great measure, the hopes which the people of this kingdom have so justly entertained, of having an end put to the difficulties the woollen manufactures lie under in this session of parliament.

St. John de Bletsoe,	Litchfield,	Cowper,
Masham,	Hay,	Craven,
Effex,	Wharton,	Boyle,
Manfell,	Brooke,	Bathurst,
Aylesford,	Scarsdole,	Abingdon,
Gower,	Stafford,	Uxbridge.
North and Grey,	Guilford,	

*Die Lune, 13<sup>o</sup> Novembris, 1721.*

The House (according to order) proceeded to take into consideration his Majesty's most gracious speech from the throne. And

And the same being read,

A motion was made, that this House do, on Friday next, take into consideration the causes of contracting so large a navy-debt, and the best methods of preventing the contracting the like debt for the future.

And a question being stated thereupon,

It was proposed to leave out the words following, viz. [and the best methods of preventing the contracting the like debt for the future.]

After debate, the question was put,

Contents 22 whether these words [and the best  
Not Cont. 94 methods of preventing the contracting the like debt for the future] shall stand part of the question?

It was resolved in the negative.

Dissentient',

1st, Because the principal end of all parliamentary inquiries into mismanagements, being to prevent the like for the future, we thought it more agreeable to the candour and honour of the House to express it plainly in the question itself, than leave it to be implied only; and the rather, because it seemed to us, the words left out clearly imported, that nothing personal was in view, but the publick good only, which, we thought, would rather have given satisfaction to the minds of every noble lord, than the contrary.

2dly, When the words now ordered to be left out were, for the reason given, so properly and naturally, as we conceive, made a part of the question, we could not but apprehend, that the laying them aside on debate might create a suspicion, though unjust, that this House did not intend to prevent, if possible, the contracting a large and inconvenient navy-debt for the future.

3dly, His Majesty having, in his speech from the throne, observed the ill consequences that arise



from such a large debt remaining unprovided for, we thought it very proper, if not necessary, in the resolution taken, to enter into the consideration of that debt, to express a desire of preventing the like inconvenient debt being contracted for the future; and that the doing so did not at all prejudice the causes of contracting the present great navy-debt; for however necessarily or justifiably an inconvenient thing might have once happened, yet we think it ought, if it can, to be prevented from happening so again.

4thly, His Majesty having likewise observed, in his speech from the throne, that this part of the national debt is, of all others, the most heavy and burthensome; and having set forth the mischiefs arising from the high discount on the navy and victualling bills, we thought ourselves sufficiently warranted to express a desire to consider of the best methods of preventing the like most heavy and burthensome debt, whatever the causes of contracting the present debt shall, on inquiry, appear to be; and this the rather, because the like navy-debt can bring no manner of benefit, either to the publick or any private person, but to such as, by foreseeing when it is either to be discharged or provided for, may make an excessive advantage to themselves by buying up the said bills while under a very high discount.

W. Ebor',	Scarsdale,	Salisbury,
Bristol,	Ashburnham,	Fr. Roffen',
Bathurst,	Trevor,	Aylesford,
Aberdeen,	Guilford,	Cowper,
Bingley,	Wharton,	North and Grey.
Strafford,	Boyle,	

*Die Mercurii, 15° Novembris, 1721.*

The House (according to order) proceeded to take into further consideration his Majesty's most gracious speech from the throne. After

Contents 21  
Not Cont. 63

After debate, the question was put, That an humble address be presented to his Majesty, humbly to desire, that his Majesty will be graciously pleased to give orders, that the instructions given by his Majesty to the lord Carteret, as minister or plenipotentiary to the crown of Sweden, or any other of the northern crowns, may be laid before this House?

It was resolved in the negative.

Dissentient,

1st, Because we apprehend this to be the first instance to be found in our journals, where the Lords have moved for a sight of instructions of any kind, and have not been supported by the House in that motion; and though we wish it may be the last, yet have we just reason to fear, that such a precedent once made will not fail of being followed in succeeding times.

2dly, Because we do not apprehend, how the calling for instructions after the conclusion of the treaty to which they relate, and the intervention of a general act of pardon, can be hurtful either to the publick or even to the ministers transacting such treaties; but the refusing to call for those instructions may, in our opinion, be a matter of dangerous consequence, inasmuch as it tends to discourage inquiries of this kind for the future, and by that means to embolden and screen guilty ministers hereafter.

3dly, Because though we acknowledge the right of peace and war to be in the crown, yet we must be of opinion, that this House hath also a right to inquire into the transactions of ministers employed under the crown, and to censure their conduct, when justice requires it; which cannot well be done, unless it be first known, what sort of instructions they received, and how far they have,



or ought to have complied with them; and this seems to us more particularly necessary, since the act of succession has declared, that this kingdom shall not be engaged in a war, on account of any of the King's foreign dominions; all treaties therefore with princes in the north should, above all other, be made in the plainest and most unexceptionable terms; or if the way of wording such treaties shall occasion any doubt, no method of clearing it should be neglected or avoided, that so this House, and the whole kingdom, may be satisfied, that nothing has passed derogatory to that act, which is the basis on which our present happy establishment is founded.

W. Ebor<sup>s</sup>, Wharton, North and Grey,  
Guilford, Cowper, Uxbridge,  
Boyle, Bingley, Strafford,  
Scarfdale, Aylesford, Bristol,  
Aberdeen, Bathurst, F. Roffen<sup>s</sup>.

*Die Luna, 20<sup>a</sup> Novembris, 1721.*

The House (according to order) proceeded to take into further consideration his Majesty's most gracious speech from the throne.

After debate, the question was put, Contents 22 That an humble address be pre-  
Not Cont. 59 sented to his Majesty, humbly to  
desire, that his Majesty will be  
graciously pleased to give orders, that the treaty  
of commerce, whereby the former treaties of com-  
merce are renewed with Spain, may be laid before  
this House?

It was resolved in the negative.

Dissentient,

Because, as we believe, the refusing to address  
for a treaty, which has been concluded and ratified  
so long since, is altogether unprecedented; and,  
we conceive, this case, of all others, ought not

to have been made a precedent, where the treaty, desired to be called for, hath been twice mentioned from the throne to both Houses of Parliament; and the last time, in his Majesty's speech at the opening of this sessions, expressly (as we cannot but apprehend) recommended to the consideration of both Houses of Parliament.

W. Ebor',	Wharton,	Strafford,
Aberdeen,	Aylesford,	Bristol,
F. Roffen',	Bathurst,	North and Grey,
Guilford,	Cowper,	Boyle,
Bingley,	Fran. Cestriens',	St. John de Bletsoe.

*Die Martis, 5<sup>o</sup> Decembris, 1721.*

The order of the day for the House to be in a committee again to take into further consideration the causes of contracting so large a navy-debt, and the Lords to be summoned, being read,

The House was adjourned during pleasure, and put into the said committee.

And after some time spent therein, the House was resumed.

Then a motion was made, that the employing great numbers of seamen for several years last past, more than were provided for by parliament, was one great cause of contracting so large a navy-debt, and of increasing the same, from the sum of seven hundred sixty-four thousand eighty-eight pounds three shillings and eleven pence, which was the nett-debt of the navy on the 31<sup>st</sup> of December, 1717, to the sum of one million six hundred forty-one thousand nine hundred thirty-seven pounds seventeen shillings and eight pence three farthings, which was the nett-debt of the navy on the 30<sup>th</sup> of December last.

And a question being stated thereupon,

Contents 21	After debate, the previous question
Not Cont. 60	was put, whether the said question
	shall be now put?
	It



It was resolved in the negative.

Dissentient,

Because the main question being so true in every particular, that, as we could observe, the truth thereof was not denied by any Lord in the debates, but seems to us to be admitted by the proposing and carrying the previous question, we think it highly expedient that the main question should have been put and voted in the affirmative, to the end we might have expressed our disapprobation at the least of the practice of employing much greater numbers of seamen in the fleet, for several years last past, than were provided for by parliament (when the occasion for employing them could not, in our opinion, but be foreseen) and by such our disapprobation might have discouraged, in some measure, that practice for the future, and prevented the increasing of the navy-debt again by the like proceeding.

Strafford,	Trevor,	Fran. Cestriens,
Boyle,	North and Grey,	F. Roffen,
Uxbridge,	Litchfield,	Guilford,
Aylesford,	Bingley,	Aberdeen,
Cowper,	Gower,	Foley,
Bristol,	Bathurst,	St. John de Bletsoe.

*Die Mercurii, 6<sup>o</sup> Decembris, 1721.*

A petition of the city of London was presented and read, praying to be heard by their counsel, or otherwise, in relation to a bill for the amendment of an act passed last session, for preventing the plague being brought hither from foreign parts.

And a motion being made, that the said petition be rejected,

After debate, the question was put,

Contents 48 whether the said petition shall be  
Not Cont. 22 rejected?

It was resolved in the affirmative.

Dissentient,

Dissentient',

1st, Because the liberty of petitioning the King (much more than the petitioning either House of Parliament) is the birth-right of the free people of this realm, claimed by them, and confirmed to them soon after the revolution, in an act declaring the rights and liberties of the subject, and settling the succession of the crown; and whenever any remarkable check hath been given to the free exercise of this right, it hath always been attended with ill consequences to the publick.

2dly, Because the petition so rejected was, in our opinion, every way proper and unexceptionable, both as to the manner of wording and presenting it, and the matter to which it referred; nothing being more natural and reasonable, than that any corporate body should, if they desire it, be heard upon any bill under the consideration of parliament, whereby they judge their particular interests to be highly, though not solely, affected.

This liberty we remember to have been granted in a late session, to the traders of Norwich, upon their petition touching the callicoe-bill; nor are we aware, that it hath ever, in like circumstances, been refused to the meanest corporation in the kingdom; but if it had, we humbly conceive, that, in this case, a distinction might have been made in favour of the city of London, which, being the center of credit, of the trade and monied-interest of the kingdom, and the place where the plague, should we be visited by it, is most likely first to appear; and having also remarkably suffered by means of the late fatal South-Sea scheme, was, we think, in a particular manner, intitled to apply for relief against some clauses in the quarantine-act, and deserved to have been treated on that occasion with more indulgence and tenderness.

3dly,



3dly, Because the rejecting the said petition tends, we conceive, to discountenance all petitions for the future, in cases of a publick and general concern, and by that means to deprive the legislature of proper lights, which they might otherwise receive, it being no ways probable, that subjects or societies of less consideration will venture to represent their sense, in cases of like nature, after the city of London have been thus refused to be heard.

4thly, Because as the receiving this petition could have had no ill consequences, as we conceive, nor have given any great interruption to the business of parliament, so the rejecting it may, we think, widen the unhappy differences that have arisen, and increase the disaffection to the government, which hath already too much prevailed in this kingdom.

5thly, Because the arguments used in the debate seem, to us, not to be of sufficient force; for we cannot conceive, that because the said act of quarantine is a general act, therefore no particular community or city, who think they may, in a distinguishing manner, be prejudiced by it, have a right to be heard in relation to it; and that at a time when it is under the consideration of parliament; nor can we be of opinion, that a petition agreed on by the lord-mayor, aldermen and citizens of London, in common-council assembled, and presented, not even by the numbers allowed by law, but by a Lord of this House, can possibly be a prelude or example towards producing tumultuous petitions, much less can we see, why it ought the rather to be rejected, because it came from so great a body as the city of London; on the contrary, we apprehend, that an universal grievance, which may be occasioned by any general act, must be represented to the legislature by particular persons or bodies corporate, or else it cannot

cannot be represented at all; that the rejecting such petitions, and not the receiving them, is, we think, the way to occasion disorders and tumults; and that the more considerable the body is, the more regard should be had to any application they make, especially for matters wherein not only the rights, privileges and immunities, but also their trade, safety and prosperity are, as the petition avers, highly concerned.

Bristol,	Aylesford,	North and Grey,
Strafford,	Trevor,	St. John de Bletsoe,
Gower,	Cowper,	Bathurst,
Fran. Cestriens',	Aberdeen,	Guilford,
Bingley,	Litchfield,	Boyle,
Fr. Roffen',	Uxbridge,	Coningsby.

*Die Mercurii, 13<sup>o</sup> Decembris, 1721.*

The House being moved to give leave, That a bill be brought in for repeal of so much of the act passed the last session, for preventing the plague being brought from foreign parts, as gives a power to remove to a lazaret, or pest-house, any persons whatsoever infected with the plague, or healthy persons out of an infected family, from their habitations (though distant from any other dwelling-house) and also so much of the said act, as gives power for the drawing lines or trenches round any city, town or place so infected.

Contents 20 After debate, the question was put thereupon?

Not Cont. 39 And it was resolved in the negative.

Dissentient',

1st, Because the powers specified in the question seem to us such as can never wisely or usefully be put in execution; for by the first of them, persons of what rank or condition whatsoever, either actually infected, or being in the same habitation, though in lone houses where they are well accommodated



modated, and from whence there is no danger of propagating the infection, may be forcibly removed into common lazarets, or pest-houses; and it does not appear to us, that such a power could, at any time, be reasonably executed; and therefore, we conceive, it should be repealed.

The other power extends to the drawing of lines around any city, town or place, and consequently around the cities of London and Westminster; the very apprehension of which, upon the least rumour of a plague, would disperse the rich, and by that means (as well as by hindering the free access of provisions) starve the poor, ruin trade, and destroy all the remains of publick and private credit.

2dly, Because such powers as these are utterly unknown to our constitution, and repugnant, we conceive, to the lenity of our mild and free government, a tender regard to which was shewn by the act of *Jacobi I.* which took care only to confine infected persons within their own houses, and to support them under their confinement, and lodged the execution of such powers solely in the civil magistrate; whereas the powers by us excepted against, as they are of a more extraordinary kind, so they will probably (and some of them must necessarily) be executed by military force; and the violent and inhuman methods which, on these occasions, may, as we conceive, be practised, will, we fear, rather draw down the infliction of a new judgment from heaven, than contribute any ways to remove that which shall then have befallen us.

3dly, Because, we take it, these methods were copied from France, a kingdom whose pattern, in such cases, Great Britain should not follow, the government there being conducted by arbitrary power, and supported by standing armies; and to such a country such methods do, in our opinion, seem

seem most suitable; and yet, even in that kingdom, the powers thus exercised of late have been as unsuccessful as they were unprecedented; so that no neighbouring state hath any encouragement from thence to follow so fatal an example. In the first plague, with which we were visited *anno dom.* 1665, though none of these methods were made use of, much less authorized by parliament, yet the infection, however great, was kept from spreading itself into the remoter parts of the kingdom; nor did the city of London, where it first appeared and chiefly raged, suffer so long or so much, in proportion to the number of its inhabitants, as other cities and towns in France have suffered, where these cruel experiments have been tried.

4thly, Because had such part of the act as, we think, should be repealed, been accordingly repealed, there would still have remained in it a general clause, which gives the crown all powers necessary to prevent the spreading of infection, and consequently these very powers, among the rest, if they shall be found necessary; and therefore there is no need, we conceive, to have them expressly granted in the same act of parliament, which seems not only to warrant, but in a particular manner to prescribe and direct the use of them.

5thly, Because the great argument urged for continuing these powers specified in the question, that they would probably never be put in execution in the cases objected to, seems to us a clear reason why they should not be continued; for we cannot imagine why they should stand enacted, unless they are intended to be executed, or of what use it will be to the publick to keep the minds of the people perpetually alarmed with those apprehensions, under which they now labour, as appears



pears by the petition from the city of London lately rejected: it may be an instance of our great confidence in his Majesty's wisdom and goodness, when we trust him with such powers, unknown to the constitution; but, we think, it ill becomes us to repose such trust, when it tends, in our opinion, rather to render him terrible than amiable to his subjects, and when the only advantage he can, as we conceive, draw from the trust reposed in him is, not to make use of it.

W. Ebor',	Strafford,	Aberdeen,
North and Grey,	Boyle,	Cowper,
Weston,	Fr. Cestriens',	Bingley,
Fra. Roffen',	Bristol,	Guilford,
Coningsby,	Trevor,	Foley,
St. John de Bletsoe,	Uxbridge,	Bathurst.
Gower,	Aylesford,	

*Die Martis, 19<sup>o</sup> Decembris, 1721.*

The House (according to order) proceeded to take into further consideration his Majesty's most gracious speech from the throne.

After debate, the question was put,  
 Contents 24 That an humble address be pre-  
 Not Cont. 67 sented to his Majesty, humbly  
 to desire, that his Majesty would  
 be graciously pleased to give orders to the proper officers, that the instructions given to Sir George Byng, now lord viscount Torrington, in relation to the action against the Spanish fleet in the Mediterranean, may be laid before this House?

It was resolved in the negative.

Dissentient',

1st, Because not finding any instance, on search of the journals, we believe there is none, wherein a motion for admirals instructions, to be laid before the House, has been denied; but, on the contrary, there are many precedents of instructions  
 of

of a like nature, and in stronger cases, as we conceive, addressed for by the House, and several, in point, for instructions given to admirals, particularly to Sir George Rooke and Sir Cloudesley Shovel; nor does it seem, to us, at all material, whether the conduct of such admirals had or had not been blamed before such instructions were asked for, since the sight of instructions may be previously and absolutely necessary to inform the House, whether their conduct be blameable or not.

2dly, Because we think it highly reasonable, that those instructions should be laid before this House, upon which the action of the British against the Spanish fleet in the Mediterranean was founded, without any previous declaration of war, and even whilst a British minister, a secretary of state, was amicably treating at Madrid, which court might justly conclude itself secure from any hostile attack during the continuance of such negotiations.

3dly, Because till we have a sight of those instructions, and are able to judge of the reasons on which they are founded, the war with Spain, in which that action of our fleet involved us, does not appear to us so justifiable as we could wish, and yet it was plainly prejudicial to the nation in sundry respects; for it occasioned an intire interruption of our most valuable commerce with Spain, at a time when Great Britain needed all the advantages of peace to extricate itself from that heavy national debt it lay under; and as it deprived us of the friendship of Spain (not easily to be retrieved) so it gave our rivals in trade an opportunity to insinuate themselves into their affections; and, we conceive, that to that war alone is owing the strict union there is at present between the crowns of France and Spain, which it



was the interest of Great Britain to have kept always divided; an union which, in its consequences, may prove fatal to these kingdoms.

Nor does it appear that Great Britain has had any fruits from this war, beyond its being restored to the same trade we had with Spain before we began it.

W. Ebor',	Strafford, North and Grey,
Aberdeen,	Bristol, Bathurst,
Aylesford,	Foley, Fran. Cestriens',
Compton,	Trevor, Cowper,
Guilford,	Boyle, Uxbridge,
Scarfdale,	Weston, Gower.
St. John de Bletsoe,	

*Die Jovis, 21<sup>o</sup> Decembris, 1721.*

*Hodie 3<sup>a</sup> vice lecta est billa*, intituled, An act for punishing mutiny and desertion, and for the better payment of the army and their quarters.

The question was put, whether this bill, with the amendment, shall pass?

It was resolved in the affirmative.

Dissentient',

1<sup>st</sup>, Because we have heard no arguments to convince us, that there is any necessity for a greater number of troops being kept on foot at this time, than there was after the peace of Ryswick, or the peace of Utrecht; for as to the argument urged, from the present disaffection of the people, we are fully persuaded, that the keeping up so great an army is much more likely to increase than lessen such disaffection.

2<sup>dly</sup>, Because this precedent is likely to be followed in all subsequent times, there being no probability that a conjuncture can happen, when there will be less apparent reason for keeping up a great number of forces, than at this time of a general tranquility.

3<sup>dly</sup>,

3dly, Because, we conceive, there are several clauses in this bill, which tend to overthrow the civil power in this kingdom, and turn it into a military government; and we apprehend it to be our duty to take care, that so dangerous a precedent may not be made for any future time, without an evident necessity; and it is plain there is no such necessity for erecting this military power, within this kingdom, in time of peace, because the army was well governed without it in the two former reigns.

4thly, That allowing such a number of troops were necessary, yet there is no reason can be alledged, as we apprehend, that they should be constituted in this expensive manner, which raises the charge upon the nation to about double what it was, in time of peace, in the two former reigns; and we must, with great concern, assert, that the publick is much less able to bear such an excess at the present, than at any former time.

W. Ebor',	Aberdeen,	North and Grey,
Bristol,	Guildford,	Foley,
Strafford,	Scarsdale,	Boyle,
Bathurst,	Tadcaster,	Trevor,
Uxbridge,	F. Roffen',	Fran. Cestriens'.

*Die Sabbati, 13° Januarii, 1721.*

The order of the day for the House to be in a committee again, to take into further consideration the causes of contracting so large a navy-debt being read,

The House was adjourned during pleasure, and put into the said committee.

And after some time spent therein, the House was resumed.

Then a motion was made, that the not paying off his Majesty's ships, when they came home from their several voyages, according to the antient



usage of the navy, but continuing them in sea-pay during the winter, till they went out again, has been one great cause of contracting so large a navy-debt.

And a question being stated thereupon,

After debate, the previous question was put, whether the said question shall be now put?

It was resolved in the negative.

**Dissentient,**

1st, Because, we conceive, the main question ought to have been put, since the practice complained of in it having been from the year 1690 very frequently represented against, to the admiralty and the treasury, by the commissioners of the navy (the proper officers to give advice in such matters) and who then were men of great experience, ability and probity; for being contrary to the antient usage of the navy, giving great disgust to the seamen, and causing an unnecessary expence of the publick money, we thought it highly reasonable to endeavour that a stop should be put to this method, which was attended with so many fatal consequences; and we cannot but think, the putting and voting the main question in the affirmative would have greatly conduced to that end.

2dly, Because it did not appear necessary at a time when so few men were either granted or demanded, for the service of any one year, that the seamen should be treated with so much severity, as not to be paid off according to the antient usage of the navy, but kept in floating prisons, as the said commissioners of the navy very well express it, especially since we find, that during the late wars, when forty thousand men a year were granted, this was truly thought, by the said commissioners of the navy, a way rather to provoke the seamen to desert, than encourage them to come into or continue in the service, and to be the principal, if

not

not the only reason, why it is become so difficult to get them again when wanted.

3dly, We thought at this juncture, when his Majesty had so lately, in a most gracious speech from the throne, signified his having so happily established peace throughout Europe, it would be proper (if ever) to use our best endeavours that the seamen might partake of the benefit of our mild and free government, and not be liable to greater hardships than any of their fellow-subjects, as we think they will be, if this practice be suffered to continue.

4thly, Because such methods ought to be used as will most contribute to procure the affections of the seamen to the service, which, we think, the antient usage of the navy will in this case best effect; by which they will have the satisfaction to spend their money within the kingdom, for the benefit and support of their families, as formerly, when the ships were paid off at their return home from their several voyages, and will, we hope, prevent their absconding from and deserting the service, and engage them chearfully to enter into it whenever there shall be occasion; whereas, according to the late practice, by the opinion of the said commissioners of the navy, the difficulty of getting them in the spring chiefly rises from keeping them all the winter, and yet the difficulty of getting them again is assigned as the only reason for keeping them in pay during the winter, altho' it amounts to an intolerable charge upon the kingdom, it appearing by one of the papers, now upon the table, that keeping them in pay all the winter comes to near five times as much as raising them again in the spring.

5thly, We cannot but think it a very unusual way of arguing in a House of Parliament, that a question ought not to be put, because it is generally



admitted to be true, though at the same time there may be too much reason to believe, that the practice complained of will not be altered without the interposition of parliament.

6thly, We cannot conceive the treaty with Sweden could make it necessary, as was alledged, to keep the men in pay all the winter, since it appears, by the papers upon the table, that very little or no time would have been lost, if the old method of the navy of raising them in the spring had been followed, by which much money would have been saved to the publick, especially since their so early arrival they did neither prevent landing the Czar's troops upon Sweden, when and where they pleased, nor by any action at sea contribute to weaken his naval strength.

Lastly, We take it to be very clear, that if any necessity or sufficient reason was foreseen at any time for the dispensing with this rule of the navy, it ought not to have been done without his Majesty's consent in council, it being, as we conceive, a fundamental maxim in the government of the navy, and a most essential part of his Majesty's prerogative, that no rule or establishment in the navy, whether written or unwritten, and customary, ought to be, or can regularly be abrogated, altered, or dispensed with, but by his Majesty's consent in council, especially in so weighty a point, as spending the publick treasure so much faster than it need have been in the proportion above-mentioned; and therefore we thought it expedient, that a main question should have been put and voted in the affirmative, that this great and useful prerogative of the crown might, by censuring what we take to be a breach thereof (tho' with the temper recommended from the throne) have been the better preserved for the future.

W. Ebor,

W. Ebor,	North and Grey,	Guilford,
Strafford,	Cowper,	Bathurst,
Malham,	Trevor,	Gower,
Uxbridge,	Bristol,	Aberdeen.
Compton,		

*Die Mercurii, 17<sup>o</sup> Januarii, 1721.*

A petition of the clergy of London was presented and read against the bill, intituled, An act for granting the people called Quakers, such forms of affirmation or declaration, as may remove the difficulties which many of them lie under.

And a motion being made, that the said petition be rejected,

Contents 60 After debate, the question was put,  
Not Cont. 24 whether the said petition shall be rejected?

It was resolved in the affirmative.

Dissentient,

1st, Because the right of petitioning in a legal manner, to legal purposes, does, we apprehend, appertain, by law and usage, to the free people of this realm, and is as essential to the subject acting, within his due bounds, as the liberty of debate is to the constitution of parliament; and this right, as it extends to the petitioning even for the repeal of acts now in force, by which the people think themselves aggrieved, so it justifies them yet more in presenting their humble sense of any new law, while it is under the consideration of parliament; nor are the clergy, we presume, less privileged in relation to the exercise of this right, than any other of his Majesty's subjects: on the contrary, we believe them as worthy of enjoying it, and as capable of exerting it to wise and good ends, as any rank of private men in the kingdom.

2dly, Because the petition so rejected is, in our opinion, proper and inoffensive, both as to the



matter and manner of it, since it partly relates to the particular rights of the clergy in point of tithes, and partly expresses their fears, as we conceive, not altogether groundless, lest the sect of Quakers, already too numerous, should by this new indulgence be greatly multiplied, and lest the honour of religion should any ways suffer, and the foundations of government be shaken by what is intended, both which it is the particular duty of their function to uphold and secure; we are not therefore apprehensive, that it misbecame their characters to interpose in any of these important points, and the way in which they have done it must seem to us free from exception, till some passage in their petition is pitched upon as obnoxious, and censured by the House, which as yet hath not been done.

3dly, Because the petition suggests a particular grievance, under which the clergy will suffer, by this act, more than any other order of men, which, as it had never been observed in the debates on the bill, so was allowed to deserve the consideration of the House; and therefore had there been any other part of their petition less unexceptionable (as we apprehend there is not) yet we do not think it was reasonable to lay aside the whole on that account, and reject what was acknowledged fit to be considered, for the sake of what was thought improper to be offered.

4thly, Because the clergy of London are not, in general, so liberally provided for, but that they have reason to be watchful in relation to any step that may unwarily be taken towards diminishing their maintenance, which we look upon as not duly proportioned to their labours in populous parishes, and to the various employments given them by infidels and hereticks, papists, and divers sects of men dissenting from the church established

by

by law, with which this metropolis is known to abound; and as their situation gives them near opportunities of observing and knowing what may be stirred in parliament, to the prejudice of their order, so we cannot but think, that it becomes them to make use of that advantage in behalf of their distant brethren, as often as need shall require, especially at a time when the representatives of the clergy are not attending in convocation, and in a readiness to exert their known right of applying to the legislature on all such occasions.

5thly, Because the London clergy, from whence the petition came, are, in our opinion, and have been always esteemed of great consideration, with respect to their extensive influence, and their ability to be serviceable to the state in important conjunctures; from this body of men have proceeded many of the most eminent lights of the church, and ornaments of the bishops bench, especially since the revolution; and, in the reign preceding it, their never-to-be-forgotten labours put a stop to the torrent of popery, then ready to overflow us; on which, and many other accounts, we cannot but wish, that the applications at any time made to this House, by the city-clergy, might be received with regard and tenderness, and a more than ordinary indulgence allowed them, at a time when so great favours are about to be bestowed on the professed oppugners of their function and maintenance.

6thly, Because, by experience we find, that the treating in this manner a petition from any great and considerable body of men is not the best way to allay the jealousies and extinguish the uneasiness that occasioned it, a very contrary effect having followed (according to the best of our observation) from the rejecting a petition lately offered by the city of London; and the oftener such instances are repeated,



repeated, the more, we fear, the disaffection of the people will increase, who, thinking themselves under hardships, from which they desire to be relieved, may look upon it as a new and yet greater hardship not to be heard; and though the modest and dutiful demeanor of the clergy should no ways contribute to these consequences, yet we know not how far this may be the case with respect to their flocks, to whom their persons and characters are dear, and who may therefore be induced, by the reverence they bear to their pastors, to express as much concern on their account, as they would on their own: for which reason it was our earnest desire, that this second, and, in our opinion, dangerous experiment, might not have been made.

W. Ebor,	Strafford,	Guildford,
Weston,	Foley,	Cowper,
Uxbridge,	Aberdeen,	North and Grey,
Scarfdale,	Gower,	Bathurst,
Compton,	Trevor,	Montjoy,
Bristol,	Bingley,	Fran. Roffen'.
Comingsby,	St. John de Bletsoe,	

N. B. This protestation was expunged by order of the 5th of March, 1721.

*Die Veneris, 19<sup>o</sup> Januarii, 1721.*

*Hodie 3<sup>a</sup> vice lecta est billa,* intituled, An act for granting the people, called Quakers, such forms of affirmation, or declaration, as may remove the difficulties which many of them lie under.

The question was put, whether this bill shall pass?

It was resolved in the affirmative.

Dissentient,

1st, Because the privileges allowed by this bill, to the Quakers, are without example, and no ways proportioned to the steps formerly taken towards a gradual indulgence of them; for whereas they have

have been hitherto under the real obligation of an oath, though dispensed with as to some formalities, with respect to the manner of wording and taking it, they are now altogether released both from the form and substance of an oath, and admitted to profess fidelity and give testimony upon their simple affirmation; nor are these great privileges indulged to them, as the less were, from time to time, and by degrees, but are at once made perpetual.

2dly, Because we look upon the Quakers, who reject the two sacraments of Christ, and are, as far as they so do, unworthy of the name of Christians, to be on that account unworthy also of receiving such distinguishing marks of favour.

3dly, Because the Quakers, as they renounce the institutions of Christ, so have not given even the evidence by law required of their belief of his divinity, it no ways appearing to us (nor do we believe it can be made appear) that ever since they were first indulged, W. & M. one Quaker in an hundred hath subscribed the profession of Christian belief directed by that act; nor could we, upon a motion made in the House, prevail, that they should even now be obliged, by such previous subscription, to intitle themselves to the new and extraordinary favours designed them; the consequence of which must, in our opinion, be, that they will encourage themselves yet farther in their aversion to subscribe that profession of Christian belief, which they seem more to decline than even the taking of an oath, since great numbers of them have sworn, though very few have subscribed that profession; nor are we without apprehensions, that it may reflect some dishonour on the Christian faith, if the evidence given by such persons, on their bare word, shall, by law, be judged of equal credit with the solemn oath of an  
acknow-



acknowledged Christian and sincere member of the established communion.

4thly, Because we look upon it as highly unreasonable, that in a kingdom where the nobles, the clergy and commons are obliged to swear fealty to the crown, and even the sovereign himself takes an oath at his coronation, a particular sect of men, who refuse to serve the state either as civil officers or soldiers, should be entirely released from that obligation; since 'tis natural to expect, that persons thus indulged, as to the manner and the measure of performing their allegiance, should, by degrees, be induced totally to withdraw it, 'till they become as bad subjects as christians.

5thly, Because, tho' such extraordinary privileges are allowed to the sect of Quakers by this bill, yet there is no mark or test prescribed by it, or by any other act, by which it may certainly be known who are Quakers, and consequently who are or are not intitled to those privileges; from whence this inconvenience may arise, that many not really Quakers may yet shelter themselves under the cover of that name, on purpose to be released from the obligation of oaths; it not being, we conceive, in the power of the magistrate, as this bill stands, to oblige any person to take an oath, who at the time of tendering it shall profess himself a Quaker; so that the concessions now made to that sect may prove a great inlet to hypocrisy and falshood, and will naturally tend towards increasing their numbers, which we rather wish may be every day diminished.

6thly, Because we do not apprehend, that the Quakers, as a sect, are really under such scruples in point of an oath, that it is necessary to ease them by such an act, few of them having for five and twenty years past, since their solemn affirmation (equivalent to an oath) was enacted, ever re-  
fused

fused to comply with it; and should this have now and then happened, yet when the great body of any sort of sectaries are at ease in their consciences, the scruples of a few, we think, ought not to be regarded, especially if continuing the law now in force will probably extinguish those scruples; and the repeal of it will certainly give new life and strength to them.

7thly, Because the security of the subject's property, which depends upon testimony, seems to us to be lessened by this act; the reverence of an oath having been always observed to operate farther towards the discovery of truth, than any other less solemn form of asseveration; nor can the Quakers be excepted in this case, whose awful apprehensions of an oath appear from their earnest endeavours to decline it; and therefore, where the payment of tithes, by them held to be sinful, is concerned, they will have strong inducements to disguise the truth, in what they simply affirm, rather than wound their consciences and credit, by contributing towards the support of such antichristian payment: in other cases of property, their interest only will clash with their veracity; but the double motive of interest and conscience will influence them with respect to the clergy, whose calling and maintenance they equally condemn.

8thly, Because the inducement mentioned in the bill towards granting the Quakers those favours, that they are well affected to the government (a position of which we have some doubt) might, we apprehend, be improved into a reason for granting the like favours to Deists, Arians, Jews, and even to Heathens themselves; all of which may possibly be, as some of them certainly are, friends to the government: however, their friendship, we presume, would be cultivated at too great an expence, if, for the sake of it, any thing should be  
done



done by the legislature which might weaken the security of all governments; an oath; and by that means do more mischief to the state in one respect, than it brought advantage in another: and we the rather thus choose to reason, because an argument was urged in the debate, and no ways disallowed, that if heathens themselves were equally of use to the state, as the Quakers are, they ought also, equally by law, to be indulged; whereas our firm persuasion is, that as no man should be persecuted for his opinions, so neither should any man, who is known to avow principles destructive of christianity, however useful he may otherwise be to the state, be encouraged by a law, made purposely in his favour, to continue in those principles.

W. Ebor',      Strafford,      Aberdeen,  
 Fra. Roffen',      Trevor,      St. John de Bletsoe,  
 Compton,      Gower,      Fran. Cestriens',  
 Montjoy,      Salisbury,

*Die Jovis, 25<sup>o</sup> Januarii, 1721.*

The order of the day for the House to be in a committee, to take into further consideration the causes of contracting so large a navy-debt, and the instruction to the said committee, that they do, in the first place, consider of the occasion of that part of the said debt, which arises from having employed more men in the sea-service, in any year, than were provided for by parliament for such year, and from the not paying off all the seamen at winter, being called for,

Contents 23      After debate, the question was put,  
 Not Cont. 60      that authentick copies of the several treaties, instructions, and orders, relating to the British squadrons being sent into the Baltick for several years last past, be laid before this House, that the true occasion of that part of the navy-debt, which the committee is instructed

instructed to consider in the first place, shal the better appear; as also that the act of settlement has not been infringed by those several northern expeditions?

It was resolved in the negative.

Dissentient,

1st, Because it being now admitted by the House, in the instruction given to the committee, that the navy-debt was increased by employing more men in the sea-service yearly than were provided for by parliament, and by the not paying them off in the winter; the intention of the House in that instruction must, in our opinion, manifestly be to direct the committee to enquire into the true occasion and reasonableness of those services, by which the navy-debt was increased; and that end could not, we think, be any ways attained without a sight of those treaties, instructions and orders, upon which those services were founded, since the considering the occasion of an extraordinary acknowledged expence must, we conceive, imply an inquiry into the true causes for which such an expence was made; we did therefore think it necessary to desire copies of the treaties, instructions and orders, relating to the several Baltick expeditions, because without them we could not possibly learn the true reasons of those expeditions; and it seemed to us incongruous that the House should direct an inquiry, and not contribute to it, by directing also those materials to be laid before the committee, which alone could render such an inquiry effectual.

2diy, Because the want of such authentick papers and instructions could no ways, we think, be supplied by any verbal representations that might be made by lords in the ministry, as facts occurred to their memory in the debate; this being no sufficient foundation for any parliamentary inquiry,  
much



much less for such a one as tends to approve, excuse or blame the measures of those in power, since we cannot think it suitable either to the rules of reason, or the dignity of this House, to proceed to resolutions relating to the conduct of ministers upon facts stated by the ministers themselves.

3dly, Because motions for such papers and instruments have been frequently made and complied with, nor hath any such motion ever (as far as we can learn) till of late been refused; the only paper included in the general motion, that we thought any ways doubtful, whether we should obtain, was the lord Carteret's instructions, which was moved for before, in this session, without success; however, we had hopes of prevailing even for a sight of that paper, when it became necessary, as we apprehend, to qualify the committee of the whole House to do the work appointed by the House.

4thly, Because the great increase of the navy-debt arose from the frequent sending of strong squadrons to the Baltick, and continuing them there at seasons of the year when the British fleet has seldom been known to be employed so far from home, and in so rugged a climate; and therefore we thought it reasonable to expect the fullest satisfaction in our inquiries into the grounds of expeditions, which had been carried on in so unusual, expensive and hazardous a manner; which the more extraordinary they were, the more they needed, in every respect, to be cleared and justified, that misapprehensions prevailing without doors, in relation to those northern transactions, might be rectified, and such precedents might not remain without the reasons on which they were founded; whereas we are now apprehensive, that any resolutions on this head may lose much of their weight

weight and influence should they be known to have been framed upon the facts barely asserted by ministers, without evidence of any sort to prove the truth of those facts.

5thly; Because one great view we had in our motion for those papers, was to satisfy ourselves and others, that the act of settlement had been no ways infringed by those northern expeditions, a point of the utmost consequence to the present establishment, and on which therefore all our care and circumspection ought to be employed: 'tis the birth-right of the peerage, as to concur in the enacting all laws, so to enquire into the observation of them; and the more momentous the law is, the more it becomes us to consider, how far it hath or hath not been violated; and one great inducement to our inquiry into the observation of that law was the jealousy entertained (as we conceive) on that head by many of his Majesty's good subjects, observing that the war in the north ended at last in a peace, which stripped Sweden of all its best provinces, and confirmed the acquisition of them to the several northern powers concerned, without any particular advantage, that we hear of, stipulated in behalf of Great Britain, besides that of a new guaranty for the protestant succession: a sight of the said treaties, instructions and orders, might perhaps have dispelled these apprehensions; and therefore we thought it our duty to move for them, and to express our concern that such a motion was over-ruled; for we cannot think the argument used to discourage us from insisting on that motion (that it amounted to an inquiry, whether the King had broke his coronation-oath) was consistent with the freedom of parliamentary debates, or agreeable to the known rules of our constitution, which free the crown from all blame, and



and suppose those only who give pernicious counsels answerable for the fatal effects of them.

W. Ebor,	Compton,	Aylesford,
Boyle,	Cowper,	Gower,
Foley,	Fr. Cestriens,	Bathurst,
Weston,	Fra. Roffen,	Montjoy,
Bristol,	Strafford,	Bingley,
St. John de Bletsoe,	North and Grey,	Guilford,
Scarsdale,	Uxbridge,	Trevor.
Aberdeen,		

Then the House (according to order) was adjourned during pleasure, and put into the said committee.

And after some time spent therein,

The House was resumed, and the two following resolutions were reported, *viz.*

(That it is the opinion of this committee, that the employing great numbers of seamen for several years last past, more than were provided for by parliament, and thereby increasing the debt of the navy, was occasioned by services which either were pursuant to the previous advice, or had the subsequent approbation of one or both Houses of Parliament, and which were also necessary for the safety of the kingdom and the tranquility of Europe.)

(That it is the opinion of this committee, that the nature of the said services necessarily requiring some of his Majesty's squadrons to be kept out the whole year, and detaining others abroad till the months of November or December; and it being requisite to fit out the said squadrons in the month of February, or the beginning of March, in order to their sailing early in the spring, the paying them off, upon their return, was inconsistent with the due performance of those services, nor could the saving (if any) by such payment have in any degree made amends for the ill consequences which must

must thereby have arisen from the disappointment to the service.)

Which resolutions were read by the clerk.

And the first of the said resolutions being read a second time,

The question was put, whether to agree with the committee in this resolution?

It was resolved in the affirmative.

Dissentient,

1st, Because this resolution seems to clash with the instruction from whence it sprung, which was to consider the occasion of the increase of the navy-debt, that arose from employing more men in the sea-service than were provided for by parliament; whereas from the resolution it appears only, that the services occasioned the debt, not what real occasion or reason there was for those services, which yet was the point we suppose chiefly in view, and most worthy of a parliamentary inquiry.

2dly, Because those services are, in this resolution, supposed to be justified by the previous advice or subsequent approbation of one or both Houses of Parliament; whereas it did not any way appear to us that either House of Parliament had previously advised, or subsequently approved such services, though the vouchers in that respect were often and earnestly required; nor doth it appear to us, how that assertion is warranted, either by general expressions in votes and addresses, or by a state of the navy-debt communicated every year to the parliament; and therefore being still in the dark, as to the evidence pointed at, we could wish that the growth of the navy-debt had been explained and justified by an inquiry into the ends and reasons for which it was contracted; but this way not being taken, nor being possible to be taken till the treaties, instructions and orders, requisite to this purpose are produced, we know not



in what sense either those sea-services, or that great navy-debt they caused, may be said to have been approved by this or the other House of Parliament.

3dly, But had we been duly informed of the true motives upon which those services were undertaken, and thereby enabled to judge of their reasonableness (as, we think, we in no degree were) yet still we must be of opinion, that those considerations, how important soever, would not have justified the exceeding the number of men asked of and allowed by parliament, which nothing but absolute and unforeseen necessity can ever excuse; whereas the occasions of these extraordinary expences were foreseen, and the fleets were sent out for many years successively, (the parliament sitting) without any previous demands made of such supplies as were proportioned to the expence intended; and we are further of opinion, that whenever such a debt is unavoidably incurred, it should be especially stated to the parliament, together with the necessity that occasioned it, at their next assembling, that the excuse may be then either allowed or censured, and the exceedings provided for in time, instead of being suffered to run on for many years together, till an insupportable debt is contracted, without any other notice taken of the reason of its growth, than the laying annually a general state of the debt on the table of the House of Commons. This we conceive to have been the case; and, if it be, do not err, we think, in affirming, that had the services appeared to have been necessary, yet this manner of increasing the debt would not have been warranted.

4thly, Neither can we apprehend, how the safety of the kingdom depended upon those extraordinary services, some of which were performed in the Mediterranean, others in the Baltick, against powers

powers not at enmity with Great Britain, whose friendship (it seems to us) we should rather have cultivated, and whose resentments we had, and still have (we fear) reason to apprehend: we cannot but think it the true interest of Great Britain to intermeddle as little as is possible in the quarrels of Europe; and then, by our good offices chiefly, without declaring any resolution to support our mediation by force, or making ourselves either principals or parties in wars that do not immediately concern us. We look upon our navy (the natural security of our island) as too much hazarded, and some chief branches of our trade as highly endangered, by the consequences of those remote expeditions; nor are we yet satisfied, that the peace by us mediated and concluded in the north, hath not made the provision of naval stores for our fleet more precarious than formerly, tho' on that single article the safety of the kingdom may possibly depend; nor can we judge the present tranquility likely to last, since, after all our expence, the late northern peace hath reduced Sweden so low, and left the Czar in the possession of such provinces as may render him very formidable; and what matters may still remain unadjusted in treaties, whereby the tranquility may soon be disturbed, we cannot determine, since we have not been indulged in our desire of inspecting those treaties.

W. Ebor',	Fr. Roffen',	Guilford,
Aylesford,	Gower,	Aberdeen,
Foley,	Fran. Cestriens',	St. J. de Bletsoe,
Scarsdale,	Bristol,	Boyle,
Trevor,	Weston,	Bathurst,
Strafford,	Uxbridge,	Compton,
North and Grey,	Cowper,	Bingley.

Then the other resolution being likewise read a second time,



The question was put, whether to agree with the committee in the said resolution?

It was resolved in the affirmative.

Dissentient,

1st, Because that part of the question which concerns such of his Majesty's ships as are said, but not proved, to have been necessarily kept out the whole year has not the least relation, as we conceive, to any thing that has been yet objected to, which was, the not paying ships that came home before the winter, and ought by the ancient usage of the navy to have been paid off; and therefore we cannot but think was very improperly made part of the question.

2dly, Because it being admitted in the question, that the ancient usage of the navy was, that all ships, when they returned home from their several voyages, should not be kept in pay during the winter (as was the case of the late Baltick squadrons for some years past) and it not having been made appear, as we think, in a parliamentary way, that by any treaty with Sweden it was necessary to send ships sooner in any year than might have been consistent with the said ancient usage; we are of opinion, that the resolution will encourage the practice complained of, and will greatly contribute to make fleets (so much to the honour and security of this kingdom) too chargeable to be supported.

3dly, Because we cannot but be surprised, there should be the least doubt (as in the question) whether any money might have been saved by paying off the men, when it appears by a paper upon the table, that several ships companies, amounting to many thousands of men, have been kept in pay during the winter; which expence, we cannot but think, ought to have been avoided, it appearing from other papers and representations upon the table,

table, that by paying the men off, more than five parts in six of the whole charge of those men during the winter had been saved to the publick.

4thly, Because a resolution of this House, that seems to countenance a practice of this sort (at a time when every way of getting money at the expence of the publick is not found to be less in peoples thoughts than formerly) may probably encourage those, who shall have opportunity in future times too readily to contribute towards the increase of navy-debts, though they are attended with so many ill consequences, that his Majesty, in a most gracious speech from the throne, has very lately been pleased to say, they do not only affect all publick credit, but greatly increase the charge and expence of the current service, and are of all others the most heavy and burthensome.

W. Ebor',	Strafford,	Guilford,
Cowper,	Boyle,	Aberdeen,
Scarfdale,	Gower,	St. John de Bletsoe,
Fran. Cestriens',	Aylesford,	Compton,
F. Roffen',	Uxbridge,	Weston,
North and Grey,	Bristol,	Foley.
Trevor,	Bathurst,	

*Die Jovis, 1<sup>o</sup> Februarii, 1721.*

The House having been in a committee to take into further consideration the causes of contracting so large a navy-debt,

And being resumed, and Monday fortnight appointed to take that matter into further consideration.

A motion was made, that the victualling his Majesty's ships by any other than the victuallers appointed for that service, or their agents, is contrary to the course of the navy, and by taking away the proper checks, is one cause of contracting so large a navy-debt.



And the question being put thereupon?

It was resolved in the negative.

Dissentient?

1st, Because it being unquestionably the ancient course of the navy to victual all his Majesty's ships by the commissioners of the victualling, or their agents, unless in case of necessity; and it appearing to us, by a paper returned before this House from the Victualling-Office, that many ships, and squadrons of ships, have of late years been victualled by the commanders, very few of which were so victualled by any order, and amongst those many instances a few only were excused, because there were no agents for the Victualling-Office, nor any stores in the places where the ships then were; we think it reasonable to conclude, that all the several victuallings in the said paper contained, being much the greater number, which were neither excused therein, nor said to be ordered, were so provided without any order or excuse whatsoever; and consequently were a needless breach of the said good course of the navy, and by taking away the proper check made to save the publick-money must, in our opinion, necessarily have been one of the occasions of the increase of the navy-debt.

2dly, We cannot but observe, that if the said excuse had (in the paper abovementioned) been applied to all the several instances there of victualling, in a manner contrary to the course of the navy, yet it had been insufficient, since it is not alledged, that agents for the victualling and stores might not have been timely had in the places where the ships were victualled, if due notice had been given to the commissioners of the victualling, and proper precautions and endeavours had been used to that end.

3dly,

3dly, We cannot but think, that carrying this question in the negative will undoubtedly encourage this breach of the course of the navy, as it is acknowledged to be, and in consequence put it into the power of every admiral or commander in chief of any squadron, and every commander of a particular ship, not only to furnish such provisions, both in quantity and quality, as they shall think fit, but by letting the men go on shore, when in port, on pretence of supplying provisions, leave a charge on the publick for want of the proper check, though to the detriment of the sea-service.

4thly, Because by this leave given to the commanders on the head of victualling, they have it in their power (thro' the want of the said true and ancient check) to bring a very great charge upon the head of wages, which must undoubtedly, as we apprehend, occasion a great waste of the publick treasure, and consequently an increase of the navy-debt.

5thly, Because, we think, that to suppose the commander of any squadron or ship will not, when it is so entirely in his power, do what shall be for his interest, is to believe him less inclined to his interest, than the generality of his fellow-subjects on shore.

6thly, Because, we believe, if this House will not discourage taking away proper checks till proof had (as urged in the debate) of what had been got by individuals for want of those checks, the delay and difficulties attending such an inquiry will probably hinder any discouragement being given to such practices, which are allowed to be contrary to the standing instructions to the commissioners of the victualling, and to the commanders of his Majesty's ships.

W. Ebor<sup>a</sup>,



W. Ebor',	Scarsdale,	Litchfield,
North and Grey,	Trevor,	Aylesford,
Compton,	Strafford,	Bristol,
Boyle,	Craven,	Uxbridge,
St. John de Bletsoe,	Guilford,	Cowper.
Bathurst,	Bingley,	

*Die Sabbati, 3<sup>o</sup> Februarii, 1721.*

The lord chancellor coming late to the House, and not having sent to the lord chief justice King, whom his Majesty, by letters patent under the great seal, entered in the journal, had authorized to supply the place of the lord chancellor in the House, in his lordship's absence, and observing some uneasiness amongst the Lords, acquainted the House, that he having been summoned to attend his Majesty at St. James's, had accordingly waited upon his Majesty there, where he was detained longer than he could foresee, by his Majesty's command, and that as soon as he was at liberty he came hither with the utmost expedition, and asked pardon for his stay of the Lords, who had been so long kept in expectation of him.

A motion was made to adjourn, and  
 Contents 31 the question being put, whether  
 NotCont. 49 this House shall be now adjourned  
 till Monday morning next eleven  
 o'clock?

It was resolved in the negative.  
 Dissentient',

1<sup>st</sup>, Because the House standing adjourned to this day at eleven o'clock, and a great number of Lords being met, and expecting the coming of their speaker till near three o'clock, they seemed to us generally to resent this usage, and without any dissent, that we could perceive, proceeded, according to the standing order of this House, towards chusing a speaker; but meeting with some difficulties

difficulties as to the persons nominated, the lord chancellor came before any choice made; and as soon as the House was sat, the lord chancellor acknowledged, as the reason of his long absence, That he had been summoned to attend his Majesty at St. James's, where the business had lasted much longer than was expected; which excuse, though it might in great measure free the lord chancellor from the imputation of wilful neglect of duty, yet it seemed to us in no degree to justify the indignity which we think was upon the whole matter done to the House, which is undoubtedly the greatest council in the kingdom, to which all other councils ought to give way, and not that to any other; and therefore the business of any other council ought not to have detained the speaker of this House after the hour appointed for its meeting, and during the time of the day the House has usually of late spent in business; and therefore we thought the least resentment the House could shew on this occasion, to prevent its being used so for the future, was to adjourn without entering on any business; and this the rather, because we foresaw it could not obstruct any publick affairs, since the time was so far spent, as that no business of consequence could well have been gone through with effect, though entered upon.

2dly, As we may venture to say, That the dignity of this House has not been of late years increasing, so we are unwilling that any thing, we conceive to be a gross neglect of it, should pass without some note on our records, that we were sensible of such neglect, and did not approve it; which we thought would have been in some measure attained by an immediate adjournment, nor was any other method proposed; and since that could not be effected, we enter this dissent, with our reasons, that it may appear to posterity we were  
zealous



zealous to withstand, in the manner proposed, the further progress of a practice so injurious, as we conceive, to the honour and authority of this supreme council.

W. Ebor<sup>s</sup>, Guilford, Trevor,  
 Uxbridge, North and Grey, Ashburnham,  
 Weston, Litchfield, Bristol,  
 Boyle, Bathurst, Foley,  
 Cowper, Osborne, St. John de Bletsoe,  
 Somerset, Strafford, Fran. Cestriens<sup>s</sup>,  
 Scarisdale, Craven, Aberdeen,  
 Bingley, Montjoy, Compton.  
 Maynard,

*Die Martis, 13<sup>o</sup> Februarii, 1721.*

*Hodie 3<sup>a</sup> vice lecta est billa*, intituled, An act for better securing the freedom of elections of members to serve for the Commons in Parliament.

And a motion being made, that the said bill be committed, the same was objected to.

After debate, the question was put,  
 Contents 30 whether the said bill shall be com-  
 Not Cont. 48 mitted?

It was resolved in the negative.

Then the question was put, whe-  
 Contents 48 } 57 ther the said bill shall be re-  
 Proxies 9 } jected?

Not Cont. 30 } 38 It was resolved in the affir-  
 Proxies 8 } mative.

Dissentient<sup>s</sup>,

Somerset.

ist, Because the methods of corruption made use of in elections, and now grown to an height beyond the example of preceding times, are, of all others, the greatest blemish to our constitution, and must, if not remedied, prove fatal to it; and did therefore chiefly deserve, as they can only admit of, a parliamentary cure.

2dly, Because the Commons, who are the best qualified to judge of the growth of this evil, and to point out proper remedies for it, having sent up a bill complaining of the one, and desiring our assistance in the other, it was not, we apprehend, suitable to the dignity and wisdom of this House, to reject such a bill, without entering into a free discussion of the particulars of which it consisted, and thereby to give an handle for reflections without doors, as if we had shewn a less degree of zeal against the corruptions complained of, than those from whose elections it sprung; our opinion is, that we should rather have taken this favourable opportunity of joining our endeavours with theirs, towards the cure of this evil, than have made ourselves liable to objections for refusing to attempt it, even after such an encouraging step taken by the House of Commons.

3dly, Because a law against corruption, though always desirable, is yet particularly seasonable and necessary at such a juncture as this, when new elections of members are coming on, and the parliament for which they shall (by what methods soever) be chosen, may continue for seven years; and, we think, the Lords are the more concerned to obviate the ill consequences of such a choice, because the septennial-act, which made so remarkable a change in our constitution, had its rise in this House.

4thly, Because we are persuaded, that by the terror of the penalties contained in this bill, which were to have operated soon after it had passed into a law, a mighty check would have been given to the growth of corruption, though it should not have been absolutely cured; and we are confirmed in this opinion, by what we have heard and believe, that while the bill was depending in parliament, and the fate of it unknown, the impious practices



practices at which it was levelled were in some measure suspended; and should a further stop have been put to corruption and bribery, at the approaching elections, by passing this bill, such a degree of success might have given the legislature hopes of an entire suppression of it.

5thly, Because supposing this bill to have been defective in some respects, and not well adjusted in others, to the end designed (a supposition made but not admitted by us) yet the true way of supplying all these defects, and making all proper alterations, would have been by committing the bill, and not by rejecting it: in other cases, where a bill of publick concern is laid aside by the House, they can easily make amends for that loss by bringing in a new one, which may more effectually answer the good ends proposed; whereas in this case there is neither time sufficient for repeating the attempt, nor can any bill of this kind be ever begun in this House with any reasonable prospect of success.

6thly, Because the intention of many chief clauses in the bill, is to provide for the more effectual execution of laws already made to secure the freedom of elections, but hitherto evaded for want of such provisions; and we know not, that any argument hath been or can be used against passing such parts of this bill into a law, but what may with equal or greater strength be urged for repealing those laws which yet are held sacred and inviolable.

7thly, Because several oaths are, by laws now in being, required to qualify electors, and the oaths enjoined by this bill are intended only to strengthen the obligations under which such electors do, by the known rules of our constitution, already lie; nor

nor are these oaths attended with any new hardship or difficulty, since they relate only to plain matters of facts, which are certainly known to the electors themselves, and which they will be ready to attest with all solemnity, if they are conscious of their own innocence; and if they are not, the legal punishment of perjury to which they are subjected is light, in comparison of the heinous nature of their offence, and the mischievous consequences of it.

8thly, Because that part of the bill, which forbids the issuing of publick money towards influencing elections, relates to a method of corruption, which, of all others, ought the most carefully to be guarded against, and yet was admitted in the debate to have been frequently practised; and therefore we cannot but wish, that this bill had been passed into a law for the sake of that clause, which would have hindered what was given for the security of subjects rights, and the safety of the kingdom, from being ever employed to the destruction of both: an example, if thus set by men in high offices and stations, cannot fail of spreading its influence thro' all ranks and orders of men, and procuring impunity and applause for such practices, as all true lovers of their country must wish might be universally detested and punished.

9thly, Because we cannot understand, how the objection made to this bill (that it removes foundations) can, with any colour of reason, be supported; on the contrary, we think, that the whole design of it is to recover our old constitution, and resettle it on those firm foundations from which it has been removed, ever since bribery has been made an usual inlet to parliament, and that dangerous traffick has been carried on between the electors and the elected, which has undermined the  
virtuous



virtuous principles, and may prove fatal to the liberties of the free people of this realm.

10thly, Because another argument insisted on in prejudice of the bill, That it would give the House of Commons greater latitude in deciding disputed elections; seems to us to be equally groundless; for the penalties intended to be enacted by this bill are to take place only upon prosecutions in the ordinary courts of justice, and cannot come under the cognizance, or be inflicted by the authority of the House of Commons; nor can the courts below be checked in their proceedings on this head by the determinations of that House, with which the methods of punishing corruption, prescribed by this bill, do not in the least interfere: what therefore was alledged in the debate can by no means be allowed, that while the Commons are the sole judges of elections, 'tis in vain to think of restraining the corruption of electors, since the methods here prescribed are such, as either operate upon the conscience, or will, in the common course of law, execute themselves; and tho' they may be forwarded, yet cannot be frustrated by the intervention of an House of Commons.

11thly, Because, as the passing this bill would have been attended with no inconveniencies to the publick, so great mischiefs may, we apprehend, ensue upon the rejecting it: the honour of this House may suffer on that account, and corruption of all sorts will, we fear, receive new life and encouragement; it being a matter of daily and certain observation, that whenever a bill is brought into parliament to redress any great disorders in the state, any discountenance given to such a bill will always countenance and increase such disorders, and make them less capable of a remedy in succeeding times, especially when it shall be affirmed in the debate, that all bills of this kind do more mischief

mischiefe than good; which way of reasoning, should it prevail, will effectually prevent all future attempts towards curing this great evil, and preserving the constitution of parliaments.

Strafford,	Scarsdale,	Salisbury,
Kent,	Bristol,	Guilford,
Cowper,	Litchfield,	Craven,
Tadcaster,	Maynard,	Montjoy,
Uxbridge,	Boyle,	Aylesford,
Weston,	Compton,	Masham,
Foley,	Trevor,	Fr. Roffen',
Bathurst,	Bingley,	Aberdeen.
Fran. Cestriens', North and Grey,		

N. B. All the last protestation was expunged by order of the 19th instant.

*Die Lunæ, 19<sup>o</sup> Februarii, 1721.*

The order was read for taking into consideration the protestation entered in the journal of this House the 13th of this instant February, against rejecting the bill for securing the freedom of elections of members to serve in parliament.

And the several reasons for the said protestation being read,

After debate, the question was put, whether the entire entry of the reasons for the said protestation, on the 13th instant, shall be expunged?

It was resolved in the affirmative.

Dissentient',

1st, Because we are of opinion, that the reasons expunged were, both as to the matter and form of them, agreeable to precedents in former parliaments, still remaining on the journals, uncensured by the House.

2dly, Because we were very desirous that the arguments contained in those reasons against bribery and corruption in elections, and our zeal for

Z

obtaining



obtaining such remedies as were proposed by the Commons themselves, might appear to posterity as fully and particularly as possible.

3dly, Because as the practice of expunging reasons is not antient, so the method taken upon this occasion, of expunging many reasons of various kinds by one general question, is (we conceive) unreasonable in itself, and is countenanced but by one precedent on our books.

W. Ebor',	Strafford,	Litchfield,
Cowper,	Aberdeen,	Weston,
Fr. Roffen',	Bathurst,	Montjoy,
Uxbridge,	Bingley,	Bristol,
Aylesford,	Fr. Cestriens',	Guilford,
Boyle,	Foley,	Compton,
North and Grey,	Ashburnham,	Maynard.

*Eodem Die.*

The order of the day for the House to be in a committee again to take into further consideration the causes of contracting so large a navy-debt being read.

After debate, the question was put, whether the House shall be now put into a committee again to take into further consideration the causes of contracting so large a navy-debt, on this day three weeks?

It was resolved in the affirmative.

Dissentient',

1st, Because the putting off the further consideration of the causes of the navy-debt to so distant a day, after so long an adjournment of the same matter already had, is, as we conceive, not only a discouragement and delay, but, as the session may happen to end, will totally prevent (at least during this session) that inquiry, which, as we apprehend, would greatly have tended to the public

lic good, in hindering so large a navy-debt from being contracted for the future.

2dly, Although the said inquiry has been a great while depending, yet a very few days, it appears by the journal, have been allowed for it, and one of those was employed in reviewing two questions, which were at first kept from being put, by previous questions; and therefore, we conceive, a few days more ought not to have been denied, for the looking into a matter of so very great importance to the public.

3dly, We apprehend, that all matters properly brought before either House of Parliament, especially inquiries into mismanagements of the public business, ought, if the time will allow it, to be freely and fully discussed and determined one way or other, and ought not to be kept off from coming to any determination, by one long adjournment after another, till the session be ended.

4thly, Because it was alledged in the debate, as a reason against so long an adjournment, That the subject-matter of the inquiry was not near exhausted; that the points already considered and determined had no relation to those proposed to be considered in the further inquiry; and consequently the determination of the former could in no degree prejudice the latter, or make the going upon them needless or improper; and to evince this, several of the particulars designed to have been proceeded upon were specified; as,

That it appeared by extracts of several letters on the table, especially by a letter from the navy-board, dated the 13th of February, 1701, that the practice of turning over companies, or part of companies, from one ship to another, without their officers, was a charge to the crown, by confounding accounts, and otherwise, as well as disgustful to the seamen.



That by other papers before the House, it appeared, that several squadrons have gone out of late without muster-masters, whose office and duty is to detect frauds in pay and on the head of victualling.

That in the year 1720, two thousand two hundred and one men were employed in the yards more than in the year 1714, and two thousand six hundred and twenty-seven men more than in the year 1698, and that the wages of those men have of late been greatly increased; both which, for aught appeared to us, are an unaccountable increase of that charge to the public.

That since the year 1714, many new captains and lieutenants had been made, while great numbers have been kept in half-pay and unemployed, besides those created on vacancies which happened while the ships were abroad, and by that means an unnecessary charge has been continued on the public, and the elder officers disobliged.

That without any order or establishment by his Majesty in council, pay has been allowed, contrary to the usage of the navy, to flag-officers at home during the winter, on pretence of their making a journey or two to see their squadrons equipped.

That without such order or establishment of his Majesty in council, captains and commanders of small numbers of ships have been paid as rear-admirals, on pretence of having captains under them, and in but one instance, that we could observe, a reason given why they had captains under them, unless it was to colour their having such pay.

And we are well assured, that, on further inquiry, it will appear that new lieutenants have been made abroad, and old ones, fit to serve, sent home to be put in half-pay.

That

That flags have been paid in double and treble capacities.

That flags and other officers have been paid as in higher stations than those they served in.

That two or three flags of the same sort have been paid at the same time.

That retrospections of pay have been allowed to flags and other officers.

All which being against the antient oeconomy of the navy, and wasteful of the public treasure, we think, should have been inquired into without loss of time.

These mismanagements, as we take them to be, and others which might have appeared on further consideration of this matter, contributing, as we apprehend, to waste the public treasure, must necessarily have been, in a great degree, an occasion of contracting so large a navy-debt; and therefore we are of opinion, that one or more further days, which would probably have fallen within this session, should have been appointed for the taking them into consideration; which not being done, we the rather enter this protest with our reasons, as what, we hope, may give an occasion to the resuming the thoughts of this matter in another session of parliament.

W. Ebor',	F. Roffen',	Bristol,
Montjoy,	Bingley,	Guilford,
Boyle,	Uxbridge,	Cowper,
Fran. Cestriens',	Strafford,	Ashburnham,
Compton,	Aberdeen,	Aylesford,
Bathurst,	Foley,	North and Grey.

N. B. Part of the last protestation, viz. from the word [specified] at the end of the fourth reason, was expunged by order of the third of March.



*Die Martis, 20<sup>o</sup> Februarii, 1721.*

The order of the day for taking into consideration the state of the national-debt being read.

Contents 23 A motion was made, and the ques-  
NotCont. 50 tion was put, That it appears by  
the state of the public debt before  
this House, that the same (exclusive of the debt  
of the navy) is increased, between the 31st of De-  
cember 1717, and the 31st of December 1720,  
at least the sum of two millions three hundred  
thousand pounds, notwithstanding that the sink-  
ing-fund hath produced within that time one mil-  
lion nine hundred and ten thousand three hundred  
eighty-five pounds fourteen shillings and six-pence  
three farthings?

It was resolved in the negative.

Dissentient,

Because the question consisted wholly of matters  
of fact, which were exactly agreeable to a paper  
laid before the House by the proper officer on the  
address of this House; and as it is not reasonable  
to be presumed, that the officers of the crown  
would state the debt higher than it really was, so  
we cannot but think, nothing was alledged in the  
debate that made it appear the debt was less than  
stated in the question; but on the contrary, had  
the exact quantum of the debt been material to  
have been inquired into on this occasion, it was  
evident to us, even from a memorandum at the  
bottom of the same paper, that the debt was, in  
reality, much higher the 31st of December 1720,  
than stated in the question.

W. Ebor',	Aberdeen,	Compton,
Bristol,	Weston,	Boyle,
Bathurst,	Cowper,	Litchfield,
Montjoy,	North and Gréy,	Fr. Roffen',
Strafford,	Fran. Cestriens',	Uxbridge,
Guilford,	Foley,	Ashburnham.

N. B.

N. B. This protestation was expunged by order of the third of March.

*Eodem Die.*

A motion was made, That the lessening the public debt annually, by all proper methods, is necessary to the restoring and preserving the public credit.

And a question being stated thereupon, after debate, the previous question was put, whether the said question shall be now put?

It was resolved in the negative.

Dissentient,

1st, Because as the main question is undeniably true, and seems to us admitted to be so, by its being prevented to be put by the previous question, so we think it would have been highly expedient and useful to the public to have had it put and voted in the affirmative, that by the declared opinion of this House (which must always be of the greatest authority) those who are more immediately concerned to take care of the public credit might not rely on vain and deceitful projects for restoring and preserving the credit of the nation, but apply themselves seriously and diligently to bring about the only effectual means of doing it.

2dly, Although so clear and evident a truth, as is contained in the main question, cannot when proposed but obtain the consent of all, especially of such as are qualified to be in great stations, yet at this juncture, when the public is under such great necessities from the unexampled pressure of debts, and when all other remedies hitherto attempted have proved ineffectual, if not mischievous, we cannot but conceive it was extremely proper, and must have greatly conduced to the restoring and preserving the public credit, to have quickened the endeavours for that purpose of all in



the public service, by so high an authority as a resolution of this House, not only pointing out to them the way they should take towards that good end, but intimating also, that as far as is possible to be attained, the doing so would be expected from them.

And therefore, we conceive, the main question should have been put and voted (as we think it must have been, had it been put) in the affirmative.

W. Ebor',	North and Grey,	Bristol,
Strafford,	Compton,	Aberdeen,
Cowper,	Fr. Roffen',	Guilford,
Ashburnham,	Boyle,	Litchfield,
Weston,	Uxbridge,	Fra. Cestriens'.
Bathurst,	Foley,	

*Die Veneris, 2<sup>o</sup> Martii, 1721.*

*Hodie 3<sup>a</sup> vice lecta est billa*, intituled, An act to prevent the clandestine running of goods, and the danger of infection thereby; and to prevent ships breaking their quarentine, and to subject copper-oar, of the production of the British plantations, to such regulations, as other enumerated commodities of the like production are subject.

Contents 36 The question was put, whether this  
Not Cont. 19 bill shall pass?  
It was resolved in the affirmative.

Dissentient',

1<sup>st</sup>, Because we are very sensible of the ill consequences that attend the pernicious practice of running goods; and therefore wish some reasonable, proper and effectual method (which we do not take this bill to be) might have been set on foot to prevent it.

2<sup>dly</sup>, Because the making the alteration, by a former bill, from ships of fifteen tun to those of thirty, has not proved of any advantage, as we apprehend, since it has been admitted that the  
customs

customs have fallen since ; and we find no ground to hope, that the further raising the prohibition to ships of forty tun, as is done by this bill, will be effectual ; but, we think, there is reason to fear, that it may be a great prejudice to the coasting-trade in particular, since the owners of such vessels are thereby subjected to the heavy penalty of losing their ships, when possibly they may be entirely innocent themselves, and the fault may be committed only through the folly or knavery of the sailors, which will discourage the lending small vessels to those who trade in them, by which a great part of the coast-trade is at present carried on.

3dly, Because the penalty of banishment in the bill seems, in some cases, to be annexed to a very small offence : We do not think it too great for any one who shall be taken with goods of any considerable value, and with a manifest intent to defraud his Majesty of his customs ; but as the bill is worded, it will, as we conceive, extend to any gentleman, if armed, returning from his travels, who has about him knowingly the least trifle that has not been entered and paid duty, though he hath not the least design to defraud the King of his customs, or thinks he is transgressing any law whatsoever ; and we do not think fit to depend, that so severe a law may not, in such hard cases, be sometimes executed with rigour.

4thly, Because it was endeavoured, but without success, at the committee, to have excepted the barges of noblemen and of the lord-mayor and companies of the city of London, which cannot be supposed to be used (and the great barges of state belonging to the city cannot be used) in the running of goods ; and therefore, we conceive, the making it necessary for the nobility, or the lord-mayor and companies to apply to the admiralty



ralty for a licence to use their own barges on the river Thames, or lay aside the use of them for want of such licences, which cannot be obtained without giving such a security as will bind and incumber the real estates of the obligers, to be not only a great and unnecessary indignity, but also an invasion of property, especially in the case of the barges belonging to the city of London, which city has an ancient right to the conservation of the river of Thames, and as high an interest in it as possible to be had in any navigable river; and therefore we think it absurd, as well as injurious to property, to compel the great officers and companies of that city, to ask and give security for a licence to navigate or pass on that part of the Thames which may not improperly be called their own river.

5thly, It seems to us partial and unjust, that the prohibition of barges, and other vessels described in the bill, should extend only to the counties for that purpose named in the bill, and not to other maritime counties, especially such as are most infamous for running goods; where, though the vessels described may not as yet be so much in use as in the counties named, yet will undoubtedly be more used in other counties not named, when they can no longer be kept in the counties or places the bill extends to; and, we conceive, laws should not make a distinction where there is no difference in reason, on a dependance that it may be supplied, by a new law, another opportunity.

6thly, Because the time allowed by the bill (viz. to the 25th of this instant March) either to dispose of the barges and other prohibited vessels, or obtain licences for the keeping, is much too short, as we conceive, and will prove the occasion of more hardships being done that can possibly be foreseen.

Scarfsdale,

Scarsdale,	Aberdeen,	Boyle,
Montjoy,	Foley,	Strafford,
Bristol,	North and Grey,	Compton,
Litchfield,	Guilford,	Bathurst,
Weston,	Uxbridge,	Cowper,
Fran. Roffen <sup>r</sup> ,	Craven,	Masham.
St. John de Bletsoe,		

*Die Sabbati, 3<sup>o</sup> Martii, 1721.*

The House (according to order) proceeded to take into consideration the motion made on Tuesday last, for making the order then made, in relation to protestations and dissents, a standing order of this House, and that the same be entered on the roll of standing orders, instead of the order of the 5th of March, 1641.

And the said order being read,

After debate, the question was put, whether the said order shall be made a standing order of this House, and entered on the roll of standing orders, instead of the said order of the 5th of March, 1641.

It was resolved in the affirmative.

Dissentient<sup>r</sup>,

1st, For that the standing order in relation to the time of entering protestations was made above eighty years since, and was restrictive of an ancient right; and yet in all that time, till now, has never been thought not to have restrained that right enough; but on the contrary, whenever longer time than is allowed by that order has been asked, as it has been done in innumerable instances, it was never once denied, as we believe; which shews, that the constant opinion of this House has hitherto been, that the restraint brought upon that ancient right of the Lords, by that old order, has been rather too much than too little.

2dly,



2dly, The abridging this right of protesting with reasons yet more, will necessarily cause the reasons to be penned with less accuracy, and probably longer than they would have been, had more time been allowed; which, though it may gratify those who differ in opinion from the protesters, yet will hurt the honour of the House, as we conceive, and the dignity of the records thereof; for we can by no means allow, that as much time should not be afforded to word the Lords reasons, which are to be entered on the journals, as would be necessary to the wording of a pamphlet designed to be printed and published.

3dly, Because, we conceive, that if this further restraint does not render the protesting quite impracticable, yet it must prove very incommodious and troublesome to the Lords who would make use of that their undoubted right; for if a debate should take up any long time, as most debates of consequence should do, the intermediate time allowed is, in our opinion, not sufficient for Lords who design to protest to meet and bring their several reasons together, and afterwards express them with that clearness, and so unexceptionably, as they ought to do; and besides, get them fairly and correctly entered on the journal: So that, in our opinion, they must very often either be excluded from entering and signing their reasons, or endure a great deal of hardship and inconvenience, by denying themselves usual rest and refreshments (as is very obvious without further explanation) and be obliged to come long before their ordinary duty of attending the business of the House requires; so that, we conceive, this new restraint will either hinder protesting with reasons, or amount to a kind of punishment on those Lords who shall make use of their ancient and undoubted right of protesting.

4thly,

4thly, There seems to us the less reason for this step, because if the liberty of entering protestations with reasons be in any degree abused, the House can, and does, order them, or such parts of them, as can be reasonably objected to, to be expunged; and this observation is yet stronger, for that of late, precedents have been made of expunging a great number of reasons, and of a various nature, by one general question; which is a very expeditious remedy for any abuse that can happen.

5thly, If ever there should be a time when the utmost candour and fairness is less in use than at present, this new restriction on the right of protesting with reasons, may open a gap to many artifices and unfair practices in prejudice of that right; clerks may come later than usual, pretend other business, or write slower, or use other shifts to avoid perfecting the entry of the reasons till after the time allowed, especially if they shall think, though falsely, they gratify a majority of the House by so doing, which will make them at least hope for impunity; or if not so disposed, they may be, on the other hand, induced (and not unreasonably) to write faster and more loosely than will become the journal of this House, that the entry may be finished within the time limited. We do not pretend to enumerate all the ways of making this alteration of the old standing order more inconvenient than appears at first sight, but only specify these few.

6thly, We do not think the right of entering protestations with reasons has been of late abused, so as to give occasion for this new restriction, though it may have been used of late more frequently than formerly; for which, according to our opinions, there hath been very proper occasions given; and since we cannot but think the  
right



right of protesting with reasons a valuable and useful privilege, we must confess our fears, lest these restrictions, though not now intended so, should end at length in a total extinction of that right.

W. Ebor',	Fran. Cestriens',	St. J. de Bletsoe,
Uxbridge,	Cowper,	Aberdeen,
North and Grey,	Bristol,	Fr. Roffen',
Strafford,	Boyle,	Foley,
Bathurst,	Litchfield,	Weston.
Trevor,		

*Eodem Die.*

The order was read for taking into consideration the protestations entered in the journal the 19th and 20th days of February last past.

And the several reasons in the protestation entered the 19th of February last, against putting off the further consideration of the causes of contracting so large a navy-debt for three weeks, being read,

It was proposed, that from the word [specified] in the tenth line of the fourth reason, to the end of the said protestation, be expunged.

And it being moved to adjourn,

The question was put, whether this House shall be now adjourned till Monday morning next eleven o'clock?

It was resolved in the negative.

Then the question was put, whether all that is contained in the said protestation after the word [specified] in the tenth line of the fourth reason, shall be expunged?

It was resolved in the affirmative.

Dissentient',

Because when we were giving reasons against putting off the further consideration of the causes of the navy-debt by long adjournments, probably  
for

for the whole session, as we thought no reason could be more proper than that the subject-matter of that inquiry was not exhausted, but that very much material business remained to be considered on that head; so we did, and do yet conceive, that the following that general assertion, with an enumeration of the particular matters which yet did remain to be enquired into (as well such as arose from papers already before the House, as other, which we were well assured would arise in the further progress of that business from papers designed to be called for) did make the said general argument, which stands unexpunged, more strong, as well as more fair and candid, by shewing it was well founded upon particulars; and although the House has not thought fit to permit the said enumeration of particulars to stand on the journal, yet, we conceive, we have attained this advantage, by having entered them, that it cannot be objected to us now, that we generally affirmed more business of consequence remained for that committee to do, without being able to instance or specify what in particular.

W. Ebor', Fran. Cestriens', North and Grey,  
 Uxbridge, Bathurst, Trevor,  
 Strafford, Litchfield, Boyle,  
 Aberdeen, Foley, Bristol,  
 Fra. Roffen', Cowper, St. John de Bletsoe.

Then the reason for the protestation entered the 20th of February last, on consideration of the state of the national debt, being read,

After debate, the question was put, whether the entire reason for the said protestation shall be expunged?

It was resolved in the affirmative.

Dissentient',

Because, we conceive, there is no instance of expunging the reasons of a protest, unless they were



were thought to contain something indecent to the House, or alledged matters of fact that were false; the first is not presumed in this present case; and as to the second, the matter depending upon figures, there can be no dispute, but upon the method of calculation; and if the Lords who signed the protest did choose to follow the method observed by the officers of the Exchequer, rather than any other, we do not conceive their reasons, founded on such authority, deserved to be expunged; neither do we think the same Lords were obliged to make deductions from the Exchequer account, which was laid before the House, without making the proper additions at the same time; for it must be agreed, that if the debt stated in 1717, was but forty-seven millions, eight hundred thousand pounds, and in the year 1720, above fifty millions, the bringing the annuities into the South-Sea company may occasion an increase of about two millions and a half; and the army-debentures, not yet brought to account, are estimated at about half a million more; and the debt of the navy is near two millions; so the whole appears to be about fifty-five millions, and the increase of the national debt (since it was stated in 1717) might therefore be reckoned about seven millions; and deducting the million of Exchequer bills, lent to the South-Sea company, the real increase of the national debt, above what it was stated at in the year 1717, appears to us, at this time, about six millions: But as the reasons were founded on the account laid before the House, which kept in the million of Exchequer-bills as a debt, and excluded all the other articles, we conceive they ought not to have been expunged, since the under-reckoning the debt was not the objection made against them.

Fran.

A. 1721.

P R O T E S T S.

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Fran. Cestriens',	North and Grey,	Uxbridge,
Bathurst,	Litchfield,	Weston,
Foley,	Boyle,	Aberdeen,
Cowper,	Guilford,	Bristol,
Strafford,	Fr. Roffen',	Trevor.
St. John be Bletsoe,		

*Die Lunæ, 5° Martii, 1721.*

The order was read for taking into consideration the protestation enter'd in the journal the 17th of January last, on rejecting a petition of the clergy in and about London, against the bill for granting the Quakers such forms of affirmation as may remove the difficulties many of them lie under.

And the several reasons for the said protestation being read,

After debate, the question was put, whether the entire entry of the reasons for the said protestation on the 17th of January last shall be expunged?

It was resolved in the affirmative.

Dissentient',

Because former reasons enter'd against some late resolutions for expunging do, as we conceive, equally extend to justify our dissent to this resolution; and therefore, to avoid repetition, we refer to those reasons, with this further, that we do not find, and believe there is not any precedent, wherein reasons for a protestation have been taken into consideration by the House so long after they were enter'd, as in the present case; and the inconveniences of doing so are, in our opinion, very manifest.

Strafford,	Fra. Cestriens',	Cowper,
Fr. Roffen',	Craven,	Bathurst,
Boyle,	Aberdeen,	Guilford,
North and Grey,	Uxbridge,	Litchfield,
St. J. de Bletsoe,	Montjoy,	Foley.

A a

*Die*



*Die Jovis, 11<sup>o</sup> Octobris, 1722.*

A bill to empower his Majesty to secure and detain such persons as his Majesty shall suspect are conspiring against his person and government, was presented, and read twice, and committed and reported with amendments; one of which being to continue the said power in force till the 24th of October 1723.

And the amendment being read a second time.

The question was put, whether to agree with the committee therein?

It was resolved in the affirmative.

Dissentient,

1st, Because the act, commonly call'd the Habeas Corpus act, is admitted on all hands to be the great bulwark of the liberty of the subject; and therefore, altho' in cases of actual rebellion and intended invasion, that act has been at times before suspended, yet it was done sparingly and by degrees; and the utmost term for which it has hitherto been suspended, at any one time, has been the term of six months; which consideration puts us under a very melancholy apprehension, for the very being or effect of that excellent law, since the present suspension of it, for the term of a year or more, will be full as good an authority, in point of precedent, for the suspending it on another occasion for the term of two years, as any former precedent is now for the present suspension during one year and more.

2dly, The detestable conspiracy which occasions the present suspension having being discovered and signified to the city of London about five months since, and divers imprisoned for it a considerable time past, we cannot but conceive it to be highly unreasonable to suppose, that the danger of this plot, in the hands of a faithful and diligent ministry,

stry, will continue for a year and more yet to come, and that in so high a degree as to require a suspension of the liberty of the subject, for so we take it to be, during all that time.

3dly, His Majesty, having not visited his dominions abroad these two last years, will, very probably, leave the kingdom the next spring, to that end; in which case, this great power of suspecting and imprisoning the subjects at will, and detaining them in prison till the 24th of October 1723, and for as much longer time as till they can, after that, take the benefit of the Habeas Corpus act, if they can then do it at all, will be lodged in the hands of some of our fellow-subjects, who, we are not so sure, will be above all prejudices and partialities, as we are, that his Majesty will.

4thly, This weakens the provision made in the bill for the lords, and members of the other House of parliament, that they shall not be committed or detained, the parliament sitting, without the consent of the Houses respectively; since it is very probable the parliament will not be sitting the greatest part of the time for which this bill, if enacted, will continue a law: and such is the weakness of human nature, that we cannot be assured, but that the apprehension of what may befall any member of parliament, while the parliament is not sitting, may have some influence on the freedom of acting and debating in parliament.

5thly, The dictatorial power was always ended or laid down immediately when the urgent occasion for it was over, and was never continued much longer, till a little before that great state, from which all others draw so many maxims of government, lost its liberties.

W. Ebor', Osborne, Guilford,

Aylesford, Fra. Cestriens', Craven,

Gower, Ashburnham, Cowper,



Scarsdale,	Bathurst,	Bingley,
Trevor,	Strafford,	Litchfield,
Hay,	Anglesey,	Uxbridge.
Masham,		

*Die Veneris, 26<sup>o</sup> Octobris, 1722.*

The House was informed, that his Majesty having just cause to suspect the duke of Norfolk was engaged in the traiterous conspiracy carrying on, had caused him to be apprehended, and did desire the consent of the House, that the said duke might be committed and detained according to the act for suspending the Habeas Corpus act.

After debate, the question was put, Contents 60 that this House does consent to Not Cont. 28 the committing and detaining Thomas duke of Norfolk, on suspicion of high-treason, pursuant to the act passed in this present session of parliament, entitled, An act to empower his Majesty to secure and detain such persons as his Majesty shall suspect are conspiring against his person and government?

It was resolved in the affirmative.

*Dissentient*, *don't bone* : *was a surmised law* *habeas*

1<sup>st</sup>, Because we apprehend it to be one of the ancient undoubted rights and privileges of this House, that no member of the House be imprisoned or detained, during the sitting of Parliament, upon suspicion of high-treason, until the cause and grounds of such suspicion be communicated to the House, and the consent of the House thereupon had to such imprisonment or detainer; which ancient right and privilege is recognized and declared in plain, express and full terms, in the act passed this session of parliament, to which the message from his Majesty refers.

2<sup>dly</sup>, Because it appears clear to us, not only from former precedents, even when no such law

was

was in being as that above-mentioned, but also from the necessary instruction of the proviso therein concerning the privileges of parliament, that the House is entitled to have the matter of the suspicion communicated to them in such manner as is consistent with the dignity of the House, and will enable them to deliberate and found a right judgment thereupon for or against the imprisonment or detainer of the person concerned: But to maintain, that whilst that law shall be in force, it shall be sufficient, in order to obtain the consent of the House, to communicate a general suspicion, that a member of the House is concerned in a traiterous conspiracy, without disclosing any matter or circumstance to warrant such suspicion, is, in our opinions, an unjustifiable construction of the said proviso, and such as wholly deprives the House of the liberty of giving their free and impartial advice to the throne on this occasion; and such a construction being made upon a law, so plainly intended by the wisdom of this parliament to assert the privileges of both Houses, appear to us, to pervert the plain words and meaning of it, in such a manner, as renders it wholly destructive of those very privileges intended to be preserved.

3dly, Because his Majesty having, in effect, required the judgment and advice of the House touching the imprisonment and detainer of the duke of Norfolk, we ought not, as we conceive, either in duty to his Majesty, or in justice to the peer concerned, to found our opinions concerning the same on any grounds, other than such only as his Majesty hath been pleased to communicate in his message; and his Majesty, by his message, having communicated only a general suspicion, we think we cannot, without the highest injustice to the duke, and the most palpable violation of one of the most valuable privileges belonging to every



ber of this House, give our consent to his imprisonment or detainer, and thereby make ourselves parties to, and, in some degree, the authors of such his imprisonment, until we have a more particular satisfaction touching the matters of which he stands suspected; more especially considering the long and unprecedented duration of the act above-mentioned, whereby the benefit not only of the act, commonly called the Habeas Corpus act, but of Magna Charta itself, and other valuable laws of liberty, are taken from the subjects of this realm, and extraordinary powers are given to the persons therein mentioned, over the liberties of the people for a twelvemonth and upwards.

4thly, Because, we think, it is inconsistent, as well with the honour and dignity, as with the justice of this House, in the case of the meanest subjects, to come to resolutions for depriving them of their liberty, upon other than clear and satisfactory grounds: but as the members of both Houses of Parliament are, by the laws and constitution of this kingdom, invested with peculiar rights and privileges, of which the privilege before-mentioned is a most essential one, as well for the support of the crown itself, as for the good and safety of the whole kingdom; we cannot, as we conceive, without betraying those great trusts which are reposed in us, as peers of this realm, agree to a resolution which tends, in our opinion, to subject every member of this House, even while the Parliament is sitting, to unwarrantable and arbitrary imprisonments; and we have the greater reason to be jealous of the infringement of this privilege on this occasion, because it had been very easy, as we think, for those who had the honour to advise the framing the said message, to have communicated to this House the Matter of which the duke of Norfolk stands suspected, in  
such

such a manner as might be consistent with the privileges of this House; and at the same time avoided any danger or inconvenience to the crown, with regard to the future prosecution of the said duke, if any such shall be.

5thly, It is the known usage and law of parliament, that this House will not permit any peer to be sequester'd from parliament, on a general impeachment of the Commons, even for high-treason, till the matter of the charge be specified in articles exhibited to this House; which explains to us the nature of the privilege intended to be secured by the proviso, and is the highest instance of the care of this House to preserve it from being violated on any pretence whatsoever: but, in our opinions, it must create the greatest inconvenience and repugnancy in the proceedings of the House, to consent that a peer of the realm should be imprisoned or detained (the parliament sitting) on a suspicion of high-treason only, not warranted, for aught appears to us, by any information given against him upon oath, or otherwise, and no particular circumstance of such suspicion being communicated to the House.

6thly, Because a resolution so ill grounded as this appears to us may produce very ill effects, in the present unhappy conjuncture of affairs, by creating fresh jealousies in the minds of his Majesty's subjects, who cannot fail of entertaining certain hopes of the safety of his Majesty's person and government against all his enemies, from the advice and assistance of both Houses of parliament, whilst they continue in the full enjoyment and free exercise of their ancient and legal rights and privileges; but on the other hand, may be alarmed with new fears for the honour and safety of his Majesty and his government, by a resolution taken by this House for the imprisonment of a peer of the realm,



in such a manner as, in our opinions, is highly injurious to his person, and also to the privilege of every other peer of this realm, and which may prove of fatal consequence to the constitution of both Houses of parliament.

W. Ebor,	Fran. Cestriens,	Strafford,
Bathurst,	Scarsdale,	Foley,
Trevor,	Lechmere,	Osborne,
Hay,	Hereford,	Bristol,
Uxbridge,	Bingley,	Guilford,
Oxford,	Compton,	Ashburnham.
Cowper,		

*Die Lunæ, 21<sup>o</sup> Januarii, 1722.*

A motion was made, that the judges of the King's-Bench be ordered to cause the trial of Christopher Layer, Esq; to be forthwith printed and published, the same being first perused by the King's counsel.

And a question being stated thereupon,

After debate, the previous question  
 Contents 32 was put, whether the said question  
 Not Cont. 53 shall be now put?

It was resolved in the negative.

Dissentient,

1st, Because it appeared to us, on the debate of the main question, that there has been an unnecessary and affected delay in the printing and publishing the said trial, it being full two months since Christopher Layer was tried; and direction having been given for the speedy publishing thereof, so long since as the 27th of November last, as appears by an advertisement, printed by authority, in the Gazette; and it having being allowed in the debate, that the delay was extraordinary, and no fact having been laid before the House sufficient, as we apprehend, to excuse such delay, we think, that the main question ought to have been

been put, as the only security, in our opinion, against any further neglect, and to prevent any imputation on the honour of the House for countenancing or conniving at such delay.

2dly, This House having received no manner of satisfaction, since his Majesty's most gracious speech from the throne, touching the horrid conspiracy therein communicated, and no step having been taken, for ought appears to us, either in parliament or elsewhere, for obtaining the justice due by the laws of the land to any of the conspirators (except the said Laver) tho' his Majesty was pleased to assure this House, in his speech from the throne, that some of the conspirators were then taken up and secured; we think that the main question ought to have been put, whereby the publication of the said trial might have been quickened, and thereby the nation have received such satisfaction concerning the said execrable conspiracy, as could be collected from the said proceeding, and this House have been enabled to make such use thereof as should appear necessary in their wisdom for the honour, interest and safety of his Majesty and his kingdoms.

3dly, Because we are apprehensive, that the delay in publishing the said trial may have contributed to create jealousies concerning the said conspiracy, and may have encouraged ill-affected persons to foment the same, to the great prejudice of his Majesty's government; and as, in our opinion, the speedy publishing the said trial, if the same had been done, might have conduced to the prevention of those mischiefs, we also conceive, that the further growth of them might have been checked, if the main question had been put, and carried in the affirmative.

4thly, Because we think it of great consequence to his Majesty's service, that the publication of the  
said



said trial should have been made under the strictest security against any partiality or other abuse relating thereto; and therefore, we think, the main question ought to have been put, whereby the care and inspection thereof would have been lodged, by the authority of this House, in the hands of the judges, to whom it properly belongs; and its falling into any other hands not so proper, or not so immediately responsible to this House, would have been prevented.

Anglesey,

Osborne,

Foley,

Craven,

Fran. Cestriens,

Lechmere,

Cowper,

Weston,

Trevor,

Bathurst,

Strafford,

Ashburnham,

Aylesford,

Hereford,

Compton.

Gower,

Then a motion being made, and the  
 Contents 29 question being put, that the judg-  
 Not Cont. 48 es of the King's-Bench do attend  
 in their places on Thursday next;  
 and that the King's council, who were concerned  
 in the trial of Christopher Layer, and also the  
 council for the said Layer at the said trial, and Mr.  
 Samuel Buckley, and the person or persons who  
 took the said trial in short-hand, do attend at the  
 bar of this House at the same time?

It was resolved in the negative.

Dissentient,

1st, Because the House having resolved, that  
 the question for ordering the printing the trial of  
 Layer should not now be put, we are of opinion,  
 that it is thereby made necessary, for the honour of  
 the House, that the occasion of the delay should be  
 inquired into; for without such inquiry, we are  
 apprehensive, that the proceedings of this House  
 may be misconstrued as tending to countenance  
 such delay.

2dly,

2dly, Because we think it the right of this House to enquire into all neglects or abuses which concern the publick; and tho' it was objected in the debate, that such inquiry might carry some imputation on the judges, or other persons concerned, we think, that that objection may be equally assigned against all inquiries; but is inconsistent with the honour and dignity of the House, and ought not, as we conceive, to be put in the balance with the honour of the House and the publick service, to which the question, in our opinion, has an apparent tendency.

Anglesey,	Strafford,	Trevor,
Aylesford,	Compton,	Cowper,
Ashburnham,	Wetton,	Osborne,
Fran. Cestriens',	Lechmere,	Bathurst,
Brooke,	Gower,	Foley.
Craven,		

*Die Martis, 29<sup>o</sup> Januarii, 1722.*

The order was read for taking into consideration the protestation enter'd in the journal of this House upon Monday the 21<sup>st</sup> of this instant January; and the several reasons in the said protestation being read,

A motion was made, that it is a groundless assertion in the protestation enter'd upon Monday the 21<sup>st</sup> of this instant January, that it appeared in the debate, that there had been an unnecessary and affected delay in the printing and publishing the trial of Christopher Layer; and the utmost indignity to this House to suggest, that any question was necessary to have been put for preventing an imputation on the honour of this House for countenancing or conniving at such delay.

And a question being stated thereupon,

It was proposed after the word [debate] and before

fore the word [that] to add these words, viz. [to the lords who signed the said protest.]

Which being objected to,

The question was put, whether those  
Contents 34 words shall be made part of the  
NotCont. 64 question?

It was resolved in the negative.

Then it was proposed, after the word [question] and before the words [was necessary] to insert these words, viz. [in the opinion of the same lords.]

Which being likewise objected to,

The question was put, whether those words shall be made part of the question?

It was resolved in the negative.

Then the foregoing stated question was put?

And it was resolved in the affirmative.

Dissentient,

1st, Because the assertion and suggestion in the protestation intended to be censured by the resolution are qualified, as the amendments offered would have stated them, if admitted, by being restrained to the opinion of the lords who signed the protestation; but those restrictions are wholly omitted in the resolution: and we are clearly of opinion, that if the assertion and suggestion had been set forth in the resolution, as they stand in the protestation, they could not have been censured with any colour of justice; but that the said omission being, as we conceive, of a circumstance extremely material, we think the censures contained in the resolution are not applicable to the assertion and suggestion found in the protestation, but to such as are of a very different nature.

2dly, The restraining the assertions used in protestations to the apprehension or opinion of the lords protesting, where it contradicts the opinion of the House, if, as we conceive, so much of  
of



of the effence of a protestation with reasons, that of the great number of instances of such protestations standing on the journals of this House, not one would be found regular among them, if that due caution and respect to the opinion of the majority was omitted; and therefore it seems clear to us, that the like censure might be as justly passed on all the protestations with reasons, that were ever entered, if they were recited and represented in the same manner as we conceive this to be.

Brooke,	Litchfield,	Lechmere,
Fran. Cestriens',	Exeter,	Compton,
Scarsdale,	Guilford,	Foley,
Cowper,	Osborne,	Bathurst,
Craven,	Hereford,	Hay,
Montjoy,	Uxbridge,	Aberdeen,
Ashburnham,	Strafford,	Gower,
Trevor,	Anglesey,	Bingley.

Then a motion was made, That the said trial has been printed and published with as much expedition as the length and nature of the said trial, and the careful perusal and examination thereof by the judges, could admit of, and in as little time as has been generally accustomed in the like cases; and that it is an unjust insinuation, that the authority of this House was wanting for lodging the care and inspection of the said trial in the hands of the judges, or that there was any danger of its falling into any other hands, or that the same had been under the direction of any others whatsoever besides the judges,

And a question being stated thereupon,

It was proposed to leave out these words, viz. [and that it is an unjust insinuation, that the authority of this House was wanting for lodging the care and inspection of the said trial in the hands of the judges, or that there was any danger of its falling into any other hands, or that the same had been

been under the direction of any others whatsoever besides the judges.]

Which being objected to,

The question was put, whether those  
 Contents 62 words shall stand part of the que-  
 Not Cont. 35 stion?

It was resolved in the affirmative.  
 Dissentient,

Because we conceive it to be contrary to the nature and course of proceedings in parliament, that a complicated question, consisting of matters of a different consideration should be put, especially if objected to, that lords may not be deprived of the liberty of giving their judgments on the said different matters, if they think fit.

Scarsdale,	Cowper,	Bathurst,
Aberdeen,	Fr. Cestriens',	Guilford,
Exeter,	Montjoy,	Litchfield,
Brooke,	Foley,	Lechmere,
Osborne,	Ashburnham,	Bingley,
Hay,	Strafford,	Uxbridge,
Trevor,	Gower,	Compton,
Anglesey,	Craven,	Hereford.

Then the main question was put,  
 Contents 58 that the said trial has been printed  
 Not Cont. 32 and published with as much expedition, as the length and nature of the said trial, and the careful perusal and examination thereof by the judges, could admit of, and in as little time as has been generally accustomed in the like cases; and that it is an unjust insinuation, that the authority of this House was wanting for lodging the care and inspection of the said trial in the hands of the judges, or that there was any danger of its falling into any other hands, or that the same had been under the direction of any others whatsoever besides the judges?

It was resolved in the affirmative.

Dissen-

Dissentient,

1st, Because when a question was moved, on the twenty-first of this instant, in order to appoint a day for this House to enquire, if the printing Layer's trial was dispatched with all proper expedition, or if not, where the fault lay; which would naturally have led us to have seen, if it had fallen into any other hands than it should have done; tho' we thought it highly reasonable, the majority of the House then did not, and we were yet willing to have gone into the same examination; but we cannot conceive it to be fit or agreeable to the dignity or regular course of proceedings in this House to vote or resolve so many matters of fact, as are contained in this resolution, without any examination at all, or any evidence given to support them, and which in their nature, we think, cannot be withing the knowledge of any one lord present in the debate.

2dly, As for the insinuation with which the protestation is charged by this resolution, we do not apprehend the protestation to be justly liable to that charge; but supposing it to be so, we cannot yet but be of opinion, that the permitting that matter to have been fully inquired into, would have been the properest and best method of preventing or answering that insinuation.

Litchfield, Brooke, Uxbridge,

Foley, Strafford, Osborne,

Gower, Compton, Anglesey,

Lechmere, Exeter, Fran. Cestriens',

Guilford, Craven, Montjoy,

Scarsdale, Cowper, Bathurst,

Trevor, Aberdeen, Hereford.

Bingley, Hay,

Then a motion was made, that this House, not capable of doubting of the truth of the traitorous conspiracy communicated to them by his Majesty



Majesty in his most gracious speech from the throne, has ever since that time received very great satisfaction from some convincing proofs touching the same, and is firmly persuaded, that such further satisfaction will be yet in due time given, as must render it impossible for any one to doubt thereof.

And a question being stated thereupon,

After debate, the previous question was put, whether the said question shall be now put?

It was resolved in the affirmative.

Dissentient,

1st, Because, to the best of our apprehensions, no part of the protestation gave occasion for the putting of such a question; for it was, as we conceive, clearly admitted in the protestation, that his Majesty's most gracious speech from the throne had given satisfaction as to the truth of the conspiracy in general; and the excepting Layer's trial therein did plainly allow, that the said trial had, as far as they went, opened the particulars; and yet the resolution, as we take it, carries with it an insinuation, that the protestation had raised a doubt concerning the truth of the said traiterous conspiracy; which insinuation is, in our opinion, entirely groundless.

2dly, The said several resolutions importing censures, as we conceive, on the said protestation, and being not warranted by more than one precedent, that we can find, on the journals of this House; and the liberty of protesting with reasons being an unquestionable right and essential privilege of the whole peerage, we are of opinion, that the said resolutions tend to discountenance and discourage the due liberty of protesting, and in that respect may be, as we apprehend, of dangerous consequence.

Litch-

Litchfield,	Brooke,	Aberdeen,
Osborne,	Fran. Cestriens',	Strafford,
Guilford,	Craven,	Hereford,
Compton,	Anglesey,	Cowper,
Bathurst,	Foley,	Uxbridge,
Bingley,	Lechmere,	Exeter,
Hay,	Scarsdale,	Gower.
Montjoy,		

*Die Sabbati, 16<sup>o</sup> Februarii, 1722.*

Report was made from the committee of the whole House, of the amendments made to the bill for punishing mutiny and desertion.

And the amendment in relation to the number of forces to be allowed, which was to specify, that 16,449 effective men, and 1,815 invalids, should be the number instead of all the forces then on foot, being read a second time,

Contents 70 The question was put, whether  
Not Cont. 25 to agree with the committee in the  
said amendment?

It was resolved in the affirmative.

Dissentient',

1st, Because, as we conceive, the keeping an army of regular troops in this kingdom, under martial law, consisting of a greater number than what we take to be necessary for the guard of the king's person and defence of the government, is of the most dangerous consequence to the constitution of this kingdom, and, in our opinion, may bring on a total alteration of the frame of our government from a legal and limited monarchy to a despotick; and we are induced to be of this judgment, as well from the nature of armies, and the inconsistency of so great a military-power and martial-law with the civil authority, as from the known and universal experience of other countries in Europe, which by the influence and power of standing armies, in time of peace, have from li-

mitted monarchies, like ours, being changed into absolute; for which reason we cannot give our consent to this amendment, whereby the present number of troops amounting in the whole (invalids included) to fourteen thousand odd hundred men (which we think abundantly sufficient for all good purposes) will be increased to near four thousand more, altho' there be at this time no ground to apprehend an invasion from a foreign enemy, or, as we believe, any insurrection or rebellion at home.

2dly, Because that which seems to have given rise to this augmentation of the army, is the late treasonable conspiracy, which his Majesty at the opening of this session acquainted his parliament with; and that conspiracy having been discovered above eight months since, and the further detecting and punishing the conspirators having been ever since in the hands of a faithful and vigilant ministry, we cannot think it at all probable the conspiracy should be still carrying on; or if any dregs of it should be yet remaining, that the government cannot be easily secured by the civil authority, assisted with so great a number of troops as are at present on foot; and therefore we cannot think ourselves justifiable to the kingdom, whose rights and liberties we are intrusted to preserve, had we given our votes to this augmentation of troops, when no evident necessity or just occasion appeared to us for such an increase.

3dly, Because the act passed this session, to enable his Majesty to apprehend and detain in custody any person suspected of being engaged in any treasonable conspiracy for above twelve months (tho' that power had never been granted to the crown before half that time at once, and that when there was an actual rebellion or an expected invasion) was so great a power added to the former autho-



authority of the crown, that we cannot but think altogether sufficient to prevent any mischiefs from treasonable plots or practices, which may be attempted or carried on by any rebellious or disaffected persons without increasing the army, which in its present state is not submitted to, but as necessary for avoiding a greater evil.

4thly, Tho' the augmentation by this bill is only for one year, yet, we fear, this will be a means for the continuing them in perpetuity; for we think it probable there will at all times hereafter be easily found as good reason for continuing this increase, as there is now for making it.

5thly, Because we think, the greatest and only lasting security to his Majesty and his government is in the hearts and affection of his subjects, and if the disaffection or discontents which have of late happened from some unfortunate proceedings, are thought by any to be an argument for raising more forces, we think it the duty of all good subjects, who wish well to his Majesty and our present happy establishment, to use their best endeavours for curing those discontents by removing or lessening the occasion thereof, and consequently that there should not be an augmentation of the army, which is already sufficiently burthensome to the subject, both by the great charge of maintaining them, and by the uneasiness to the place where they are quartered, because thereby the charge to the subject will be considerably increased, which, as we apprehend, ought most carefully to be avoided in our circumstances, when the load of taxes is already so great, and the kingdom involved in so immense a debt, that nothing but the most prudent oeconomy and good husbandry can give us any probable prospect of easing it; and therefore not being convinced of any real and just grounds for such increase of troops, do fear that this will not

take away or lesson, but rather increase the discontents and disaffection of the people; and, in that respect, weaken his Majesty's government in a greater degree than it will be strengthened by this addition of forces, allowing something for the possibility of false musters.

W. Ebor',	Osborne,	Compton,
Scarsdale,	Bristol,	Bathurst,
Poulett,	Litchfield,	Strafford,
Ashburnham,	Gower,	Fra. Cestriens',
Aberdeen,	Uxbridge,	Trevor,
Hay,	Foley,	Cowper.
Oxford and Mortimer,	Montjoy,	

*Die Sabbati, 9<sup>o</sup> Martii, 1722.*

Complaint being made to the House, that in a paragraph of the printed report from the committee appointed by order of the House of Commons to examine Christopher Layer, and others, and to whom several papers and examinations laid before the House, relating to the conspiracy mentioned in his Majesty's speech at the opening the session to be carrying on against his person and government were referred, the lord Strafford and lord Kinnoul are mentioned in the deposition of Andrew Pancier, that he had been told by one Skeene (now in custody) that the said lords knew of an invasion intended by forces from abroad, and were concerned in the management of the conspiracy here, And thereupon a motion being made, that the said Andrew Pancier and ——— Skeene be immediately sent for to attend at the bar of this House.

After debate, the question was put, that Andrew Pancier and ——— Skeene be immediately sent for to attend at the bar of this House?

It was resolved in the negative.

Dissentient,



Diffident;

1st, Because the earl of Kinnoul and the earl of Strafford having severally complained to the House, that they find themselves reflected on in a printed deposition of one Andrew Pancier, wherein he deposeth, that one Skeene (now in custody) had acquainted him, among other things, that the said earls knew of the late conspiracy, and were concerned in the management of it here; and the said earls alledging, that they did not see by the report, in which that deposition is found, that the said Skeene, tho' in the hands of the government, had been so much as questioned touching the said hearsay (which observation we find to be true) we think it highly reasonable to have complied with the motion and request of the said lords, that the said Pancier and Skeene might be examined at the bar of this House in relation to that matter only; the like request, for the better clearing the reputation of any noble lord, when he hath thought it unjustly aspersed, having never been denied, that we know of; but on the contrary, it was, not long since, granted in the case of the earl of Sunderland, tho' the examination which he thought reflected on his honour was not come into print when he made his complaint; which, according to our judgment, was not so strong a case, for granting the motion, as the present is.

2dly, Because the said deposition, as far as it is printed, contains nothing but what one deponent heard another say (except as it contains a charge on Skeene for saying it) we think it was very natural and proper, as well for the advancement of justice, as for the vindication of the noble lords requesting it, to trace the said hearsay, if possible, to the fountain-head, or at least so far as to know, from the person charged with relating it, whether he would deny his having related it; or if not,



whether he would confess the falsity of what he had so related, or undertake to make it good by his own testimony, or otherwise.

3dly, We think there could be no inconvenience in examining, as moved, to find whether there was any, and what foundation for this hearsay; it not being an anticipation of the course of justice (as examining a part of the evidence against any man, or a part of an accusation, would be) since the swearing what one man said of a third person is in no sort evidence, either in law or reason, to support a conviction, or even to ground an accusation upon, in any form whatsoever.

4thly, Since a mere hearsay, being no evidence in the least degree, cannot be made a foundation for any legal proceeding, it is impossible for any noble lord, whose honour may be affected by it, to hope to clear himself on any trial, or other like opportunity that can be given him to make his defence; and therefore, since there is no other method, that we can think of, so proper or effectual, in our opinions, as an examination of the nature of that moved for, we think it ought to have been ordered, and that every noble lord may possibly, in time, be hurt by the consequence of this precedent.

5thly, We cannot think that the examining, as moved for, into this hearsay only, could have made any difference with the other House, since it is inconceivable by us, that any number of gentlemen, who may have by accident (for we hope it is no otherwise) in setting forth the deposition of Pancier as a charge against Skeene, happened to asperse the reputation of some of the peers of the realm, could resent either that these lords should desire, or the House permit them to clear themselves as soon and as effectually as possible of that hearsay.

Straf-

Strafford,	Fran. Cestriens',	Osborne,
Aylesford,	Guilford,	Arundell,
Poulett,	Anglesey,	Craven,
Bristol,	Foley,	Bruce,
Bathurst,	Exeter,	Hay,
Scarsdale,	Cowper,	Uxbridge,
Willough. de Broke,	Berkeley of Strat.	Weston,
Litchfield,	Compton,	Bingley.

*Die Jovis, 21<sup>o</sup> Martii, 1722.*

Complaint being made to the House by the earl of Scarsdale, earl of Strafford, earl Cowper, lord Craven, lord Gower, lord Bathurst, and lord Bingley, that in one or more of the examinations of Christopher Layer, in the printed appendixes referred to in the report from the committee appointed by order of the House of Commons to examine Christopher Layer and others, it is set forth, that one John Plunkett told him the said Layer, that the said lords were of a club or meeting called, in some of the said Plunkett's letters, Burford's Club.

And the said lords severally declaring the same to be false and groundless,

A motion was made, and the question was put, that John Plunkett, now in custody, being the person who, Layer says, in one or more of his examinations, told him, that several lords of parliament, therein named, were of a club or meeting called, in some of the said John Plunkett's letters, Burford's Club, be forthwith brought to the bar of this House, to be examined touching the said matter only?

It was resolved in the negative.

Dissentient',

And for reasons we refer to those entered on a

protestation made on the 9th day of this instant March, to a resolution of the like nature,

Scarsdale,	Bingley,	Craven,
Aylesford,	Uxbridge,	Litchfield,
Barhurst,	Gower,	Dartmouth,
Montjoy,	Hay,	Strafford,
Weston,	Cowper,	Poulett,
Compton,	Foley,	Guilford.
Exeter,		

*Die Veneris, 29<sup>o</sup> Martii, 1723.*

A petition of Francis lord bishop of Rochester, prisoner in his Majesty's Tower of London, was presented to the House and read, setting forth, that by order of the House of Commons he has received a copy of a bill for inflicting certain pains and penalties upon him for supposed crimes, of which he is innocent: that by another order of the said House (upon the petitioner's letter to the speaker) council and solicitors are allowed to come to him to assist him in the making his defence; but the petitioner finding by a standing order of this most honourable House of the 20th of January 1673, that no Lord may appear by council before the House of Commons to answer any accusation there, he is under great difficulty; and that he may not do any thing which may give offence to their Lordships, and be derogatory to the rights of peerage, in which, as a member of this House, he has the honour to partake, the petitioner humbly prays their Lordships directions for his conduct in this behalf.

And the standing order being read,

A motion was made, and the question  
 Contents 32 was put, that the bishop of Ro-  
 NotCont. 78 chester being a lord of parliament,  
 ought not to answer or make his  
 defence by council or otherwise, in the House of  
 Commons,



Commons, to any bill or accusation there depending?

It was resolved in the negative.  
Dissentient'.

1st, Because, we conceive, the permitting the lord bishop of Rochester to make his defence in the House of Commons would be directly contrary to the words and meaning of the standing order of the House, bearing date the 20th of January 1673, which expressly and clearly orders, that for the future no lord (which extends to lords spiritual as well as temporal) shall go down to the House of Commons, or send his answer in writing, or appear by council to answer any accusation there; and it is observable that this order is worded absolutely, and not qualified by the words [without leave of the House] as the following standing order of the 25th of November 1696, which prohibits lords from going into the House of Commons while the House is sitting, is qualified; from which different penning, as well as from the preamble of the said first mentioned order, which shews the mischief designed to be prevented was, the giving leave, in cases of lords desiring it, to appear or answer accusations in the House of Commons, we infer that the said order of January 1673, was meant as a rule for all future times, that if leave should be asked by a lord of parliament to answer or make a defence to an accusation, in any form, as we conceive, in the House of Commons, it ought to be denied, as deeply intrenching on the privileges of this House.

2dly, The said standing order, in affirmance of which the question was moved, ought to be of the greater weight, in our opinions, it having been founded on the consideration and report of a committee, to whom it was particularly referred to consider the practice of lords desiring leave to answer

answer accusations in the House of Commons, on the perusal of precedents in that committee, and upon serious consideration and perusal of the same precedents in the House itself.

3dly, We cannot apprehend but that a bill, by which crimes are charged and a preparation is made to inflict penalties, if the crimes are proved, contains clearly an accusation, especially when a day is given, and council allowed by the House of Commons to the person against whom the crimes are alledged to make a defence to the same; which proceeding, though in the legislative capacity of that House, carries in it all the essential parts of a judicial trial; and we therefore conceive, that this House ought to be more jealous of their members answering in the House of Commons an accusation in this form, rather than in any other, since thereby they submit themselves to try the point of their being guilty or not guilty in the House of Commons, and that in order to receive the sentence and judgment of that House by passing or rejecting the bill; and this, in our opinions, more deeply intrenches, as the standing order expresth it, on the privileges of this House, than a lord's going down to the House of Commons, during a debate there, to prevent an impeachment, doth; the latter being only to prevent an accusation, but the former is, as we clearly conceive, to answer an accusation there; the very thing prohibited by the standing order.

4thly, We think the accusation which lords are prohibited to answer, by this standing order, must be chiefly, if not only understood of an accusation, couched in a bill, as in the present case, since we never heard that any lord of parliament did at any time answer to, or defend in person, or by counsel, an impeachment in the House of Commons, tho' they may have gone down to that House by connivance

nivance to prevent such impeachment; and therefore lords defending themselves in the House of Commons against an impeachment, could not be the mischief intended to be cured by the said standing order.

5thly, That the House of Commons, on bills to inflict penalties, do proceed, strictly speaking, in their legislative capacity, is certainly true; and yet it is plain to us, that in reality they partake in such cases with the House of Lords in the judicature, or which is all one, in trying and adjudging offenders to punishment; and tho' the Lords should, in very extraordinary cases, think fit to concur in such a method of punishing, yet it is, in our opinions, going by much too far for the Lords to permit any of their body to make defence in the House of Commons either by himself or council; which is letting themselves down to a very great degree, and giving an unnecessary encouragement to that manner of proceeding; and when the Lords have so far submitted to this course, we think there is little reason to expect, that afterwards the Commons will ever appear at the Lords bar as accusers, when they can by this way make themselves as much judges, even over Lords, as in this proceeding by bill the Lords themselves are.

6thly, Though Lords, by not being permitted to appear, either in person or by council, to defend themselves in the House of Commons, may be thought possibly to lose some advantage in their defence, yet, we think, it was and is the true meaning of the standing order first mentioned, that a lord should rather suffer something of inconvenience in that particular, and commit his cause to God and the justice of the House, of which he is a member, and who are his proper judges, than in any degree debase or derogate from  
the



the legal state and dignity of the Lords in general.

7thly, Although there be, as we conceive, a very manifest and important difference in reason, as to the matter of this question, between the case of bishops, who are declared by the standing order of the 23d of May 1628, to be only Lords of parliament, and not Peers, for they are not of trial by nobility, and that of the peers of the realm, who undoubtedly, for matters of treason and felony, are triable by their peers only; yet since, by the standing order first mentioned, bishops are as much and as clearly prohibited to answer an accusation in the House of Commons, as the Peers and Lords temporal are, we cannot but apprehend, with the deepest concern, that this case may be used hereafter as a precedent, though, as we take it, far from being a precedent in point, to bring by degrees the peers of the realm to defend themselves against accusations of the like nature in the House of Commons; which if once brought to be a practice, we are of opinion, that the Peers of the realm would in great measure be degraded from their peerages, and so by weakening and debasing the order of nobility, which in its institution was meant, or at least hath proved a lustre and security to the crown, the safety as well as dignity of the crown itself may be hereafter in a great degree impaired.

Scarsdale,	Uxbridge,	Dartmouth,
Cowper,	Weston,	Gower,
Strafford,	Bruce,	Trevor,
Poulett,	Litchfield,	Aylesford,
Hay,	Montjoy,	Ashburnham,
Foley,	Bathurst,	Compton,
Arundell,	Bingley,	Guilford.

Die

*Die Veneris, 5<sup>o</sup> Aprilis, 1723.*

A petition of Francis bishop of Rochester, prisoner in the Tower, was presented to the House and read, setting forth, that on thursday the 4th instant, about three o'clock in the afternoon, colonel Williamson, deputy-lieutenant of the Tower, attended by Mr. Serjeant, the gentleman-porter, and by two warders, came up to the petitioner's room while he was at dinner, and having put his two servants under the custody of warders below, told the petitioner he must search him; the petitioner asked him for his warrant; he answered, he had authority from the ministry, affirming it upon his salvation; but the petitioner refused to be searched till he shewed it; he then said he had a verbal order, but refused to say from whom; the petitioner told him, if it were verbal only, it did not appear to him, and he would not be searched; he endeavoured nevertheless to search the petitioner's pockets himself by force, but the petitioner wrapped his morning-gown about him, and would not suffer him till he shewed his warrant, which the petitioner demanded five or six times to no purpose; he then ordered the two warders attending him to come to the petitioner and do their duty, and one of them laid hands upon him, and began to use violence; and though the petitioner knocked and called often for his servants, colonel Williamson said they should not, nor were they permitted to come near him; upon this, the petitioner submitted, and they took every thing out of his pockets, and searched his bureau and desk, and carried away with them two seals; they seized also a paper in the petitioner's pocket, but that being a letter to his solicitor about the managing of his cause, which the petitioner thought they could have no pretence to seize while he was under the protection of parliament,

liament, he took it again from them and tore it, but they carried a part of it along with them; they searched also his two servants below, and took away a seal from one of them; and those two servants likewise demanded their warrant, but they had none to produce; the petitioner therefore, as a lord of parliament, though under confinement, humbly prays that their lordships would be pleased to take these matters into serious consideration, and grant him such relief and protection, as their lordships shall judge proper against such unprecedented, illegal and insolent usage.

And thereupon a motion was made,  
 Contents 24 and the question was put, that co-  
 Not Cont. 56 lonel Williamson, the deputy-lieutenant of the Tower of London, Mr. Serjeant, the gentleman-porter, the two warders who attended colonel Williamson yesterday in the apartment of the bishop of Rochester, prisoner in the Tower of London, and the two servants of the said bishop attending his lordship, do attend the bar of this House immediately, to give an account of the matters mentioned in the said petition?

It was resolved in the negative.

Dissentient,

1st, Because the petitioner, as a lord of parliament and member of this House, though no peer of this realm, hath an unquestionable right, under all circumstances, to the justice and protection of this House against any person whatsoever, who, during the sitting of parliament, commits any act or violence to his person or property, which this House may adjudge to be a breach of privilege; and therefore as, we conceive, the facts alledged in the petition, if the same are true, and no account given of them by the persons concerned, to the satisfaction of this House, are an unwarrantable



ble attempt upon a member of this House, we think, that in justice to the petitioner, and to the honour and privileges of this House, there ought to have been an immediate and impartial examination by this House of the persons concerned, we finding no instance on the journals of this House, where any member of the House hath complained, by petition or otherwise, of the least violence or injury to his person, during the time of privilege, wherein the House hath not ordered an examination of the facts so complained of.

2dly, Because it appears to us that the petitioner being under imprisonment, and a bill depending against him in the House of Commons, that House having allowed him the benefit of council and solicitors for making his defence, were proceeding against the petitioner on that bill, in all probability, at the very time the matters complained of were transacted; and as that bill may soon come under the consideration and judgment of this House, the seizing the petitioner's letter to his solicitor, or any thing which may concern his defence, we are of opinion, ought to have been examined into, it being, as we conceive, against the rules of natural justice, the laws of all nations, and the fundamental and known laws of this realm, that any papers or other things in the lawful possession of the person so accused, and which may relate to his defence, should be forcibly wrested from him; or that any person, and more especially a lord of parliament, being under imprisonment and accusation for high treason, should by terror or other violence be, without just cause, in any degree disturbed in or disabled from making his defence.

3dly, Because the refusing to enter into the examination of the matters complained of by the petition may, in our opinions, be construed to be a justification of the proceedings therein alledged,  
even

even though there was not a reasonable occasion for the same; and it being suggested in the petition, that the deputy-lieutenant of the Tower did affirm to the prisoner, upon his salvation, that he had a verbal order from the ministry, though he refused to say from whom, and not pretending that what he did was by his own authority, we are of opinion, that it was of the greatest consequence to the honour of his Majesty's government, that this House should have examined into this proceeding; and the rather, because we conceive it to be of the highest importance to the free and impartial administration of justice, that this House should on all occasions discountenance all appearances of force, especially on a lord of parliament imprisoned and accused of high-treason.

4thly, Because, we think, that if an unjustifiable violence be offered to the person or privilege of any member of this House, and not examined into, it may prove an encouragement to commit the like, if not further abuses on any other member of this House in future times.

Strafford,	Guilford,	Foley,
Cowper,	Lechmere,	Litchfield,
Bathurst,	Scarsdale,	Ashburnham,
Hay,	Poulett,	Bingley,
Montjoy,	Weston,	Bruce.

*Die Lune, 29<sup>o</sup> Aprilis, 1723.*

*Hodie 3<sup>a</sup> vice lecta est billa,* intituled, An act to inflict pains and penalties on John Plunkett.

Contents 87 The question was put, whether this  
Not Cont. 34 bill shall pass?

It was resolved in the affirmative.

Dissentient?

1st, Because bills of this nature, as we conceive, ought not to pass but in case of evident necessity, when the preservation of the state plainly requires

requires it; which we take to be very far from the present case, the conspiracy having been detected so long since, and the person accused seeming to us very inconsiderable in all respects, and who, from the many gross untruths, it now appears, he has wrote to his correspondence abroad, must appear to have been an impostor and deceiver even to his own party.

2dly, Proceedings of this kind, tending to convict and punish, are in their nature, though not form, judicial; and do let the Commons, in effect, into an equal share with the Lords in judicature; which the Lords ought to be very jealous of doing, since the power of judicature is the greatest distinguishing power the Lords have; and there will be little reason to hope, that if bills of this nature are given way to by the Lords, the Commons will ever bring up impeachments, or make themselves accusers only, when they can act as judges.

3dly, This bill, in our opinion, differs materially from the precedents cited for it; as to the case of Sir John Fenwick, 'tis plain, by the preamble of that bill, that the ground most relied on to justify proceeding against him in that manner was, that there had been two legal witnesses proving the high-treason against him, that a bill was found against him on their evidence, and several times appointed him for a legal trial thereon, in the ordinary course, which he procured to be put off, by undertaking to discover, till one of the evidences withdrew; so that it was solely his fault, that he had not a legal trial by jury; all which circumstances not being in the present case, we take it, they are not at all to be compared to one another.

4thly, As to the acts which passed to detain Counter and others concerned in the conspiracy to assassinate the late king William (of glorious me-



mory) we conceive, those acts were not, in their nature, bills of attainder, as this is, but purely to enable the Crown to keep them in prison, notwithstanding the laws of liberty; whereas this is a bill to inflict pains and penalties, and does import a conviction and sentence on the prisoner, not only to lose his liberty, but also his lands and tenements, goods and chattles, of which he having none, as we believe, we cannot apprehend why it was inserted, and this bill now drawn on the plan of Counter's, &c. unless it was to make a precedent for such forfeitures, in cases of bills which may hereafter be brought to convict persons, who have great estates, upon evidence which does not come up to what the law in being requires.

5thly, If there be a defect of legal evidence to prove this man guilty of high-treason, such defect always was; and we think if bills of this nature, brought to supply original defects in evidence, do receive countenance, they may become familiar, and then many an innocent person may be reached by them, since 'tis hard to distinguish, whether that defect proceeds from the cunning and artifice or from the innocence of the party.

6thly, This proceeding by bill does not, in our opinions, only tend to lay aside the judicial power of the Lords, but even the use of juries; which distinguishes this nation from all its neighbours, and is of the highest value to all who rightly understand the security and other benefits arising from it; and whatever tends to alter or weaken that great privilege, we think, is an alteration of our constitution for the worse, though it be done by act of parliament; and if it may be supposed, that any of our fundamental laws were set aside by act of parliament, the nation, we apprehend, would not be at all the more comforted from that consideration that the parliament did it.

7thly,

7thly, It is the essence of natural justice, as we think, but it is most surely the law of the realm, that no person should be tried more than once for the same crime, or twice put in peril of losing his life, liberty or estate; and though we acquiesce in the opinion of all the judges, that if this bill pass into a law, Plunkett cannot be again prosecuted for the crimes contained in the preamble of the bill, yet it is certain, that if a bill of this kind should happen to be rejected by either House of Parliament, or by the King, the person accused might be attacked again and again, in like manner, in any subsequent session of parliament, or indicted for the same offence, notwithstanding that either House of Parliament should have found him innocent, and not passed the bill for that reason; and we conceive it a very great exception to this course of proceeding, that a subject may be condemned and punished, but not acquitted by it.

8thly, We think it appears in all our history, that the passing bills of attainder, as this, we think, in its nature is (except as before is said, in cases of absolute and clear necessity) have proved so many blemishes to the reigns in which they passed; and therefore we thought it our duty in time, and before the passing this bill, as a precedent, to give our advice and votes against the passing it, being very unwilling, that any thing should pass which, in our opinions, would in the least derogate from the glory of this reign.

9thly, We apprehend it to be more for the interest and security of his Majesty's government, that bills of this nature should not pass than that they should; since persons who think at all cannot but observe, that in this case some things have been received as evidence, which would not have been received in any court of judicature; that precedents of this kind are naturally growing (as, we think, this goes beyond any other which has happened

since the revolution) and if from such like observations they shall infer, as we cannot but do, that the liberty and property of the subject becomes, by such examples, in any degree more precarious than they were before, it may cause an abatement of zeal for a government founded on the revolution, which cannot, as we think, be compensated by any the good consequences which are hoped for by those who approve this bill.

Scarsdale,	Weston,	Craven,
Willoughby de Broke,	Hay,	Foley,
Poulett,	Masham,	Berkeley of
Cowper,	Brooke,	Stratton,
Bathurst,	Compton,	Aylesford,
Gower,	Fr. Cestriens',	Bruce,
Angleysey,	Montjoy,	Litchfield,
Guilford,	Uxbridge,	Dartmouth,
Osborne,	Bingley,	Ashburnham,
Trevor,	Exeter,	Lechmere,
Oxford & Mortimer,	Strafford,	Cardigan.

*Die Jovis, 2<sup>o</sup> Maii, 1723.*

After hearing council and witnesses upon the bill to inflict pains and penalties on George Kelly, alias Johnson, in behalf of the said Kelly,

And debate thereupon,

Contents 47 The question was put, that the coun-  
NotCont. 82 sel for the prisoner may be at liberty  
to proceed as they desired to examine  
witnesses to prove, by several circumstances, that  
the letters dated the 20th of April 1722, given in  
evidence for the bill, were not dictated by the bi-  
shop of Rochester to the prisoner George Kelly?

It was resolved in the negative.

Dissentient',

1st, Because it was insisted on by the prisoner's  
council, that the proof desired was necessary to his  
defence, and if allowed to be made would contri-  
bute



bute to satisfy the House of the prisoner's innocence of the crimes charged on him by the bill; for which reason alone, if there was no other, we think the witnesses ought to have been examined, it being, in our opinions, against the constant course and rules of justice, in criminal proceedings of all kinds, to preclude the prisoner's defence by refusing to hear his witnesses, if they are legal and competent, and in derogation of the honour and justice of the House, on this occasion, to anticipate the judgment of the House, in the least circumstance which the prisoner or his council insist on to be material to his defence, and which may, if proved, be of weight in the consideration and judgment of the House.

2dly, It appears to us to tend directly to prove the guilt or innocence of the prisoner, to discover, whether the bishop of Rochester did dictate to the prisoner the letters mentioned in the question; because it was declared to the House by the council for the bill, in opening the charge against the prisoner, that the letters, though wrote by the prisoner, were dictated to him by a greater person; and although the council for the bill when called upon, did not think fit to name that greater person, yet it being suggested in the report of the House of Commons, communicated to this House, and it being universally supposed hitherto, that the bishop of Rochester did dictate the said letters to the prisoner, it became, in our opinions, incumbent on the prisoner to give the House what satisfaction he could in that particular, the same being made a circumstance and part of the accusation against him, and if falsified, or rendered incredible, might influence the judgment of the House in other circumstances.

3dly, Because the declaration of Philip Neynoe deceased, though not signed or sworn by him, hath been allowed by the House to be read and given in evidence,

evidence, in proof of the particular facts charged on the prisoner in the bill ; in which declaration the prisoner is expressly charged by the said Neynoe to have frequently told him, that the bishop of Rochester held correspondences with the Pretender and the Pretender's agents, and that the prisoner was employed by the bishop in writing for him, and carrying on the said correspondences, and that he had several times left Mr. Kelly at the bishop's door, when Mr. Kelly went into the bishop's house, and stayed there an hour or two, and upon coming back to him, that the prisoner made apologies for staying so long, and told him he had been writing the bishop's letters, which he always apprehended to be the foreign correspondence of the bishop with the Pretender's agents ; for which reason also, we conceive, the proof desired ought to have been received, because it may be thought a denial of justice, by this House, to the prisoner, not to permit him to answer, even by legal evidence, the particular and direct evidence, which the House hath allowed to be given against him.

4thly, Although the prisoner may be guilty of a treasonable correspondence, if he wrote the letters mentioned in the question, and the same were not dictated to him by any person whatsoever, yet the facts charged in the bill, having been endeavoured to be proved, not by direct proof of the facts themselves, but by circumstances, in our opinions, the prisoner's defence must be applied to answer the several circumstances ; and it is, as we conceive, equally unjust to deny him the liberty of falsifying that circumstance of his writing the letters, being dictated to him by the bishop, as it would be, to refuse to allow him to prove that the said letters were not, or could not be wrote, or sent to the persons to whom they are suggested or charged to have been wrote, or sent, or to refuse him to prove by

by circumstances, that the prisoner himself did not or could not write the same, at the particular times and places the same are suggested to be so wrote or sent by him, or to deny him liberty to falsify, by circumstances, any other circumstance relating to the supposed treasonable correspondence charged on him by the bill.

5thly, The council for the bill having alledged, as one reason against the examinations desired, that they were not prepared to answer that evidence, might have been a ground for the House to have allowed them a reasonable time for such preparation; but in our opinions, that consideration ought not to weigh against the prisoner's giving the evidence to the House which he was prepared to give, especially since it was alledged, that the examinations now desired, were desired on the prisoner's part to have been made at the bar of the House of Commons, and thereby so long ago publicly notified by the prisoner.

6thly, Because the refusal of the proof of any circumstance of the prisoner's defence, if such refusal be not just, must in its consequence affect the justice of the whole proceeding against the prisoner, because it deprives the House of the liberty of forming a judgment upon the whole case, and tends, so far as that particular goes, to subject this proceeding against the prisoner to the objection of partiality, which is most highly dishonourable to this House, especially considering the latitude which hath been allowed in other parts of the examination on this occasion.

Gower,  
Guilford,  
Strafford,  
Litchfield,  
Cowper,  
Trevor,

Osborne,  
Montjoy,  
Poulett,  
Craven,  
Compton,  
Bruce,

Lechmere,  
Middleton,  
Leigh,  
Tadcaster,  
Bathurst,  
Pomfret,



Northampton,	Fran. Cestriens',	Brooke,
Berkeley of	Dartmouth,	Bingley,
Stratton,	Weston,	Ashburnham,
Denbigh,	Wharton,	Uxbridge,
Scarsdale,	Arundell,	Exeter,
Stawell,	Masham,	Salisbury,
Anglesey,	Foley,	Hay,
Cardigan,	Willo. de Brooke,	Aylesford.

*Die Veneris, 3<sup>o</sup> Maii, 1723.*

*Hodie 3<sup>a</sup> vice lecta est billa*, entitled, An act to inflict pains and penalties on George Kelly, alias Johnson.

Contents 79	The question was put, whether this
Not Cont. 48	bill shall pass?
	It was resolved in the affirmative.
Dissentient',	

1<sup>st</sup>, Because, we think, there is no reason for the legislature to pass a law, *ex post facto*, to punish this person for the treasonable correspondence he is guilty of; he being in custody, and may be brought to a legal trial in one of the courts of justice.

2<sup>dly</sup>, We conceive the want or defect of such clear and plain evidence as, by the laws of this kingdom, is required to convict any person of high treason, no sufficient reason to warrant the exercise of the legislative power in making a new law for his punishment, because such laws being made for the protection of innocent persons from suffering by false, uncertain or doubtful evidence, every subject is entitled to the benefit of those laws, when he shall fall under an accusation of high-treason.

3<sup>dly</sup>, Because, as we conceive, by the rules of natural justice laws ought to be first made, as directions for mens actions and obedience, and punishment inflicted for putting those laws in execution against offenders; and that therefore punishing by a law made after the offence committed is

not

not agreeable to reason or justice, except only in the case of real and apparent necessity to prevent the immediate ruin of a government, which we do not think to be the present case, or can bear any resemblance to it.

4thly, Because the proceedings of the legislative power, in making laws, can be governed by no rule but that of their own discretion and pleasure; and therefore the making laws to inflict pains and penalties on particular persons must, as we conceive, tend to expose the lives, liberties and properties of the subjects to an arbitrary discretion; and consequently render them precarious in the enjoyment of those blessings, which by our excellent constitution and government they have always had an uncontrollable right to hold and enjoy, till forfeited for some crime, and the person offending legally convicted thereof, upon such full and positive proof as the laws of this kingdom do require.

5thly, Because, as we conceive, it would be of dangerous consequence to the safety of innocent persons to allow copies of letters taken by the clerks of the post-office, though sworn by them to be true copies, to be given in evidence against any person accused of high-treason, especially when such copies are not compared with the originals after they were taken, and the original letters forwarded on by them, and not produced, because the originals not being produced, such person is deprived of an opportunity of falsifying those copies; and though there should be any mistake committed by the clerk in copying, whether wilfully, or by negligence, such mistake cannot be detected for want of the original writings to compare the copies with.

6thly, Because the proof of letters or other writing in criminal prosecutions, by similitude and comparison of hands, being, as we conceive, a very slight and weak evidence, because hands may be

be two easily counterfeited, and the persons examined cannot speak positively, but to their belief, and therefore not liable to be prosecuted for perjury, hath, as we conceive, very justly been discouraged in such times, when the administration of justice hath been most impartial; and convictions of high-treason, grounded on such evidence, have been reversed, by act of parliament, for that and other reasons.

Pomfret,	Bruce,	Craven,
Fr. Cestriens,	Trevor,	Guilford,
Strafford,	Cardigan,	Powlett,
Middleton,	Exeter,	Dartmouth,
Aylesford,	Stawell,	Foley,
Bathurst,	Anglesey,	Montjoy,
Litchfield,	Gower,	Tadcaster,
Weston,	Masham,	Willou.de Broke,
Salisbury,	Bingley,	Ashburnham,
Brooke,	Scarsdale,	Uxbridge,
Hay,	Denbigh,	Berkeley of Strat.
Osborne,	Wharton,	Arundell.
Compton,	Northampton,	

*Die Martis, 7<sup>o</sup> Maii, 1723.*

After hearing council and witnesses for the bill to inflict pains and penalties on Francis lord bishop of Rochester,

The question was put, that it is the opinion of this House, that it is inconsistent with the public safety as well as unnecessary for the prisoner's defence, to suffer any farther inquiry to be made upon this occasion into the warrants which have been granted by the secretaries of state, for the stopping and opening of letters which should come or go by the post, or into the methods that have been taken by the proper officers at the Post-office, in obedience to such warrants?

It was resolved in the affirmative.

Dissen-



Dissentient,

1st, We humbly apprehend, that in all criminal prosecutions the cross-examining of witnesses is necessary for the defence of the prisoner, and for the satisfaction of those who are to judge of the facts alledged against him in order to the discovering of truth, and detecting any fraudulent evidence which should be offered; and the resolution above recited does, in our opinions, debar the bishop of Rochester, and every other person concerned, from asking any questions of the clerks of the Post-office, who are brought as witnesses to the bar, relating to the stopping and opening the post-letters, though letters pretended to be stopped and opened at the Post-office are read as evidence against the prisoner: and we conceive, that the preventing any farther inquiry on these heads must lay this House under great difficulties, when they come to form a judgment on those letters, the validity of which will in a great measure depend on the proof given of their having been truly stopped and opened as asserted.

2dly, We apprehend it to be impossible for this House to determine, that the inquiry, which is desired is unnecessary to the defence of the prisoner, till he shall come to make the application; and, we conceive, he should have the liberty of asking what questions he or his council think proper of the clerks of the Post-office, relating to the stopping and opening of letters, without acquainting the House what use he intends to make of their answers; and this appears to us to be highly reasonable, essential to justice, and warranted by the methods which this House has hitherto allowed the council for the support of the bill to proceed in, who have, during the whole course of this examination, reserved the application of the evidence they

they have offered till they should judge convenient to make it.

Northampton,	Strafford,	Wharton,
Foley,	Poulett,	Willoug. de Broke,
Ashburnham,	Compton,	Scarisdale,
Litchfield,	Bruce,	Anglesey,
Exeter,	Craven,	Bathurst,
Brooke,	Bingley,	Masham,
Aylesford,	Pomfret,	Osborne,
Fran. Cestriens',	Trevor,	Gower,
Uxbridge,	Hay,	Montjoy,
Denbigh,	Weston,	Cardigan.

*Die Sabbati, 11<sup>o</sup> Maii, 1723.*

After hearing council further against the bill to inflict pains and penalties on Francis lord bishop of Rochester, and the said bishop in his own defence.

The question was put, that George Kelly, alias Johnson, now a prisoner in the Tower of London, be brought to the bar of this House on Monday morning next, to be examined upon oath on the bill, intituled, An act to inflict pains and penalties on Francis lord bishop of Rochester?

It was resolved in the negative.

*Dissentient',*

1<sup>st</sup>, Because we think it unquestionable, that the said Kelly is a competent legal witness to the matters charged by the bill against the bishop, and could not be legally refused to be sworn as such, if the bishop were on his trial for the same in the ordinary course of justice, and that, whether the said Kelly was produced either for or against the bishop; and, we conceive, if the council for the bill had thought fit to have produced him in support

port of the bill, that even no legal objection could have been made by the bishop's council against his being so produced and sworn, the bill passed this House against the said Kelly not having received the royal assent, and there not being in the said bill, in our opinions, any thing that can destroy even his legal testimony, when the same is passed into a law.

2dly, Because the three letters, dated the 20th of April, 1722, supposed to contain treasonable correspondences with the Pretender and some of his agents, have been made the principal charge against the bishop, and have been endeavoured to be proved to have been dictated to the said Kelly by the bishop, at or about the time of their date; but this not being as yet done, as we think, by direct or positive proof by any living witness of the fact, but by circumstances only, we think it most proper, and most safe and just, to endeavour to discover the truth of that material fact, by the best evidence the nature of the thing can admit of; and that this House should not be left under the difficulties of judging on this extraordinary occasion from doubtful circumstances, if the fact may be cleared by certain positive proof, and the examination of a competent and a living witness upon oath at the bar of this House.

3dly, Because several living witnesses having been examined on oath at the bar of the House, on behalf of the bishop, in order to prove by their positive testimony and other circumstances, that the bishop did not dictate or direct, or was any way privy to the writing the said letters, or any of them, which has, in our judgments, rendered it of yet greater importance, that the supposed writer of those letters should be brought under the most strict and solemn examination before the bill has passed this House.

4thly,



4thly, Because the said Kelly, though examined before Committees of both Houses of parliament, and elsewhere, hath not, to our knowledge, been yet examined upon oath to the matters contained in this bill; and it having appeared to us, in other instances on this occasion, particularly of Mrs. Barnes, examined for the bill, and of Bingley against it, who have materially varied their examinations at the bar of this House from their former examinations, at the same time declaring their former examinations were not taken and sworn to by them; we think it may be both dangerous and derogatory to the honour and justice of the House, not to examine on oath a person capable of discovering the matters of fact, on which the justice of the bill against the bishop must depend, and especially after the said Kelly hath declared in the most solemn manner, next to that of his being upon oath, that the bishop did not dictate, or was privy to the writing the said letters, or any of them; and the bishop himself, in his defence, having also, in the most solemn manner of asseveration, declared his innocence in this particular, and expressly referring to the former asseverations of the said Kelly, as we conceive, as a testimony in confirmation of his own asseverations.

5thly, Because we conceive, that the said Kelly was not only a legal witness for or against the bishop, in the strictest construction of courts of judicature, but the examination of him upon oath, on this bill, is in every respect whatsoever, in our judgments, less liable to objection than in any or most other evidences, which on this occasion have been allowed, because the bill passed by this House against the said Kelly, if it obtains the royal assent, as is most probable, doth (in judgment of law, as hath been declared by the judges) acquit him of any further prosecution for the said treasons therein  
changed

charged upon him; and there is no judgment or punishment inflicted upon him in the said bill, which can, when passed, destroy his capacity of giving evidence on any occasion; and the same being passed by this House, and not passed the royal assent, leaves the said Kelly, in our opinions, under less influence either of hopes or fears, than such witnesses which have been examined on this occasion under commitments and charge of high-treason; and, as we conceive, less liable to that objection than the declaration of Philip Neynoe, which has been read against the bishop, though never signed or sworn to by him, and the said Neynoe, some months since, drowned in endeavouring his escape, and which declaration appears to us to have been made by him under the strongest influences of guilt and terror.

6thly, We think the crimes charged in the bill against the said Kelly are in their nature distinct and independent on those charged upon the bishop, Kelly's guilt in writing the said treasonable letters proved upon him being the same, though the bishop be altogether innocent in relation thereto; for which reasons, as we conceive, this House did refuse to permit Kelly on his bill to give evidence, that the bishop did not dictate the said letters; for which reason, we are of opinion, that the evidence which Kelly might have given touching the bishop's dictating the said letters, or not, would have produced no consequence at all, with regard to the bill passed against himself, though it must necessarily have contributed to the proof of the guilt or innocence of the bishop.

7thly, This House having, with great honour and justice, declared to several persons produced as witnesses on this occasion, that it was not required from them to depose to any thing which did or might tend to their own accusation, the  
testi-

testimony of the said Kelly, if he had been examined on oath, we doubt not, would have been taken under the same just indulgence; and if he had submitted to have been examined on oath to the matters of this bill, such his examination being in that respect voluntary could not, in our opinions, have been construed as forced from him by the authority of this House; and such testimony as he might have given would have remained under the consideration and judgment of this House, as to its credit and influence, on all circumstances, in the same manner, as the other evidence for and against the bill still does.

Cowper,	Middleton,	Northampton,
Lechmere,	Denbigh,	Anglesey,
Pomfret,	Scarsdale,	Berkely of Strat-
Bathurst,	Dartmouth,	ton,
Bingley,	Salisbury,	Poulett,
Fr. Cestriens',	Foley,	Ashburnham,
Compton,	Masnam,	Guilford,
Willoug. de Broke,	Cardigan,	Aylesford,
Weston,	Litchfield,	Hereford,
Bruce,	Uxbridge,	Exeter,
Gower,	Hay,	Wharton,
Brooke,	Strafford,	Craven.

*Die Mercurii, 15<sup>o</sup> Maii, 1723.*

*Hodie 3<sup>a</sup> vice lecta est billa,* intituled, An act to inflict pains and penalties on Francis lord bishop of Rochester.

Contents 83 The question was put, whether this  
NotCont. 43 bill shall pass?  
It was resolved in the affirmative.

Dissentient',

1st, Because the objection which we thought lay against the bills of Plunkett and Kelly, that the Commons are thereby, in effect, let into an equal share of judicature with the Lords, does hold stronger,



stronger, as we apprehend, against the present bill, since by means of it a lord of parliament is, in part, tried and adjudged to punishment in the House of Commons, and reduced to a necessity either of letting his accusation pass undefended in that House, or of appearing there, and, as we take it, derogating from his own honour, and that of the Lords in general, by answering and making his defence in the Lower House of Parliament.

2dly, Because we are of opinion, that the Commons would be very far from yielding to the Lords any part of those powers and privileges which are properly theirs by the constitution, in any form, or under any pretext whatsoever; and it seems to us full as reasonable, that the Lords should be as tenacious of the rights and privileges which remain to them as the Commons are on their part.

3dly, We think this bill, against a Lord of parliament, taking its rise in the House of Commons, ought the rather not to have received any countenance in this House, for that, as it appeared to us by the printed votes of the House of Commons, that House had voted the bishop guilty of all the matters alledged against him in the bill, before the bill was brought into that House, and consequently before the bishop had any opportunity of being heard; and although there be nothing absurd in passing such a vote, in order to their accusing by an impeachment, yet it seems to us absolutely contrary to justice, which ought to be unprejudiced, to vote any one guilty against whom they design to proceed in their legislative capacity, or in the nature of judges, before the party has an opportunity to be heard on the bill which is to ascertain the accusation, or it is so much as brought in.

4thly, We are of opinion, that no law ought to be passed on purpose to enact, that any one be

guilty in law, and punished as such, but where such an extraordinary proceeding is evidently necessary for the preservation of the state; whereas the crime offered to be proved against the bishop of Rochester is, as we apprehend, his partaking in a traiterous conspiracy against the government; which conspiracy (by God's blessing) is detected, and, as we hope, disappointed, without the aid of such dangerous proceeding as we conceive this to be.

5thly, Because there are certain known and established rules of evidence, which are part of the law of the land, either introduced by acts of parliament, or framed by reason and the experience of ages, adjusted as well for the defence of the life, liberty, and property of the subject, as the punishment of the guilty; and therefore these rules are, or ought to be, constantly adhered to, in all courts of justice; and, as we conceive, should be also observed, till altered by law in both Houses of parliament, whenever they try, judge and punish the subject, though in their legislative capacity: but since, in many instances, in this and the two other proceedings by bill, we have been taught the opinion of the House, that these rules of evidence need not be observed by the Houses acting in their legislative capacity, we clearly take it to be a very strong objection to this manner of proceeding, that rules of law made for the security of the subject are of no use to him in it; and that the conclusion from hence is very strong, that therefore it ought not to be taken up, but where clearly necessary, as before affirmed; and we desire to explain ourselves so far upon the cases of necessity excepted, as to say, we do not intend to include a necessity arising purely from an impossibility of convicting any other way.

6thly,

6thly, If it be admitted, that traitorous correspondences in cyphers and cant-words may, to a degree, be discouraged by this sort of proceeding, in which persons, as we think, are convicted on a more uncertain evidence than the known rules of law admit of, yet, we are of opinion, that convenience will be much more than out-weighed by the jealousy it must of necessity, as we conceive, create in the minds of many of his majesty's most faithful subjects, that their lives, liberties and properties, are not so safe, after such repeated examples, as they were before; and by the natural consequence of this apprehension, an abatement of their zeal for the government may ensue, excepting such persons as have had more than ordinary opportunities of being well instructed in principles of the utmost duty and loyalty.

7thly, We cannot be for the passing this bill, because the evidence produced to make good the recital of it, or that the lord bishop of Rochester is guilty of the matter he therein stands accused of, is, in our opinion, greatly defective and insufficient, both in law and reason, to prove that charge; the evidence consisting altogether, to the best of our observation, in conjectures arising from circumstances in the intercepted letters, or on a comparison of hand-writings, resting on memory only, and there being, as we think, no proof of the bishop's knowing of, or being privy to any of the said correspondence; and as to the principal part of the charge against the bishop, and on which, as we think, all the rest does depend, viz. the dictating the letters of the 20th of April 1722, which the House of Lords seem to have determined that Kelly wrote, we are of opinion, that the bishop has in his defence very clearly and fully proved, that he did not, nor possibly could, dictate those

D d 2

letters,



letters, or the substance of any part of them, to Kelly, either on the day of their date, or at any time during several days next before or next after the day of their date, nor was in any capacity to write them himself, though the letters must have been wrote within that compass of time; and we are, on the whole, of opinion, that the proof and probability of the lord bishop of Rochester's innocence, in the matters he stood charged with, were much stronger than those of guilt.

Scarfdale,	Willoughby de Broke,	Cardigan,
Bruce,	Pomfret,	Fr. Cestriens',
Salisbury,	Hereford,	Anglesey,
Poulett,	Bingley,	Litchfield,
Dartmouth,	Osborne,	Foley,
Craven,	Gower,	Hay,
Aylesford,	Guilford,	Trevor,
Ashburnham,	Gower,	Uxbridge,
Bathurst,	Strafford,	Compton,
Weston,	Denbigh,	Masnam,
Arundell,	Northampton,	Middleton,
Exeter,	Montjoy,	Brooke,
Oxford and	Berkeley of Stratton,	Stawell.
Mortimer,		

I dissent from the sixth and seventh reasons of the foregoing protestation, and for the following reasons:

1st, Because this extraordinary method of proceeding by bills of this nature against persons who do not withdraw from justice, but are willing to undergo a legal trial, ought, in my opinion, to be supported by clear and convincing evidence; and, I apprehend, there has been nothing offered to support the allegations set forth in the preamble of the bill to inflict pains and penalties on Francis lord

lord bishop of Rochester, but what depends on decyphered letters, forced constructions, and improbable inuendo's.

2dly, I conceive, that the examination of Philip Neynoe, taken before the Lords of the Council, not sworn to, nor signed, which appears to me to be the foundation on which the charge against the bishop of Rochester is built, has been, in my apprehension, sufficiently proved, by the positive oaths of three persons; two of which have been for several months in separate custodies, confirmed by other circumstances, to have been a false and malicious contrivance of the said Neynoe, to save himself from the hands of justice, and to work the destruction of the bishop of Rochester.

3dly, I do not apprehend, that the letters of the 20th of April, which are suggested to be wrote by George Kelly, alias Johnson, and dictated by the bishop, have been sufficiently proved to be the hand-writing of the said Kelly; but, on the contrary, it appears, to the best of my judgment, that the letter of the 20th of August (stopt at the post-office, and from which the clerks of the post-office, on their memory only, swear they believe the said letters of the 20th of April to be the same hand-writing, though they never compared two original letters together during all that time) has been proved by three credible witnesses, concurring in every circumstance of their testimony, and well acquainted with the hand-writing of the said Kelly, not to be his hand-writing; and, I conceive, that the difference they observed in the hand of the said Kelly, upon which they ground their opinions, is sufficiently supported, by comparing the said letter of the 20th of August with the letters wrote by the said Kelly to the lord Townshend and Mr. Delafaye during the time of his confinement.

4thly.

4thly, I do not apprehend, that any proof has been offered to support what has been so much insisted on, and justly esteemed essential to the charge, that the bishop of Rochester dictated the letters of the 20th of April; but it has appeared, I conceive, that there has been no intimacy between the bishop and the said Kelly; and the testimony of the bishop's servants concurring with the evidence given on that head by the persons that Kelly lived in the strictest correspondence with, leaves, to the best of my judgment, no room to doubt, but that the acquaintance between them was slender and public; and to suggest from thence, that the bishop dictated the letters of the 20th of April, when it appeared, that for many days before he could not possibly see the said Kelly, is, in my opinion, repugnant to reason, and contrary to justice.

*Wharton.*

*Die Lunæ, 16<sup>o</sup> Martii, 1723.*

*Hodie 3<sup>a</sup> vice lecta est billa*, entitled, an act for punishing mutiny and desertion, and for the better payment of the army and their quarters.

The question was put, whether this bill shall pass?

It was resolved in the affirmative.

*Dissentient*,

1st, Because the keeping on foot a greater army in time of peace, though by consent of parliament, than is absolutely necessary for the security of his majesty's person and government, is, we conceive, very dangerous to our happy constitution; and we cannot but apprehend, the number of men allowed by this bill to be much greater than is necessary for that end.

2dly, Because the conspiracy mentioned in his majesty's speech at the opening of the last session of parliament, which was the occasion of an addition  
of



of about four thousand men, is now at an end; and therefore the cause of raising that additional number being perfectly removed, there does not appear to us the least colour of reason for continuing of that number.

3dly, Because, as we conceive, the continuing so great a number of men, this year, will be a precedent of too great weight for continuing the same number of troops in perpetuity; for we cannot, with any possibility, foresee or expect that, in any future time, there will be less reason to be given, than at present, for justifying the necessity of keeping up so great an army; there being at this time, in our opinion, as little danger to our present happy establishment, to be feared either from insurrections at home, or by any disturbance or invasion from abroad, as the nature and instability of human affairs will well allow of; and we cannot think, the fears of remote or imaginary dangers a sufficient argument for so great a present mischief as such an army must bring upon the kingdom, not only from the great charge and expence of maintaining them, when we are involved in so great a debt, but also from the jealousies which may from thence arise in the minds of many of his majesty's good subjects, of their liberties thereby being endangered; and we cannot but be apprehensive, that if so numerous an army be agreed to in parliament for some time longer, no argument can hereafter be urged for reducing the number in any future reign, but what will seem to carry with it too great a distrust of the prince then in possession of the throne; and will be thought to imply, that the same trust and confidence is not to be reposed in him as in his predecessors; and this may discourage some persons hereafter from giving their advice to the crown, upon this most important subject,

subject, with that perfect freedom, which ought ever to maintain and exert itself in the debates and resolutions of this great council.

W. Ebor',	Weston,	Litchfield,
Strafford,	Aylesford,	North and Grey,
Trevor,	Bristol,	Boyle,
Foley,	Bingley,	Gower,
Compton,	Scarsdale,	Montjoy,
Bathurst,	Fran. Cestriens',	Uxbridge.
Wharton,	Guilford,	

*Die Jovis, 18<sup>o</sup> Martii, 1724.*

*Hodie 3<sup>a</sup> vice lecta est billa*, entitled, An act for punishing mutiny and desertion, and for the better payment of the army and their quarters.

The question was put, whether this bill shall pass?

It was resolved in the affirmative.

Dissentient',

For the reasons entered in the Journals the 24th of February 1717, the 21st of December 1721, the 16th of February 1722, and the 16th of March 1723; which, we conceive, are much stronger against continuing the present number of forces, when peace abroad, and tranquillity at home, are avowedly established on as solid and lasting a foundation as the nature of human affairs will admit,

Scarsdale,	Wharton,	Strafford,
Bingley,	Montjoy,	Fra. Cestriens',
Ashburnham,	Boyle,	Litchfield,
Compton,	Foley,	Bathurst.

END of the FIRST VOLUME.



